



भारत का राजपत्र The Gazette of India

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No. 11] NEW DELHI, SATURDAY, MARCH 13, 1999/PHALGUNA 22, 1920

इस भाग में मिल पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

गृह मंत्रालय
(पुनर्वास प्रभाग)

नई दिल्ली, 2 फरवरी, 1999

MINISTRY OF HOME AFFAIRS

(Rehabilitation Division)

New Delhi, the 2nd February, 1999

का. आ. 729.—विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा 3 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा पुनर्वास विभाग, हरियाणा सरकार के विशेष सचिव, श्री सज्जन सिंह को, उक्त अधिनियम द्वारा अथवा उसके अधीन बंदोबस्त आयुक्त को सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से हरियाणा राज्य में बंदोबस्त आयुक्त नियुक्त करती है।

2. इसके द्वारा अधिसूचना सं. 1 (7)/विशेष सेल/88-एस. एस. (II) (क) ता. 18-9-1991 का अतिक्रमण किया जाता है।

[सं. 1 (7)/विशेष कक्ष/88-बंदोबस्त अनुभाग-II/एस. (क)]
फूल सिंह, निदेशक (आर-1)

S.O. 729.—In exercise of the powers conferred by Sub-Section (i) of Section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri Sajjan Singh, Special Secretary in the Rehabilitation Department of Government of Haryana, as Settlement Commissioner in the State of Haryana for the purpose of performing the functions assigned to a Settlement Commissioner by or under the said Act.

2. This Notification supersedes Notification No. 1 (7)/Spl. Cell/88-SS. II(A) dated 18-9-1991.

[No. 1 (7)/Spl. Cell/88-SS.II/S(A)]
PHOOL SINGH, Director (R-I)

नई दिल्ली, 2 फरवरी, 1999

का. आ. 730.—विस्थापित व्यक्ति (प्रतिकर तथा पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा 34 की उपधारा (2) द्वारा मुझे प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, एस. के. चट्टोपाध्याय, मुख्य बंदोबस्त आयुक्त, बंदोबस्त आयुक्त की शक्तियों का प्रयोग कर रहे, श्री सज्जन सिंह, विशेष सचिव, पुनर्वास विभाग, हरियाणा सरकार, को हरियाणा राज्य में स्थित ग्रामीण व शहरी निष्क्रान्त भूमि तथा सम्पत्तियों के संबंध में ऐसी शक्तियों का प्रयोग करने हेतु उक्त नियम की धारा 23, 24, 28 एवं 35 के अधीन मुख्य बंदोबस्त आयुक्त की शक्तियाँ प्रत्यार्पित करता हूँ।

2. इसके द्वारा दिनांक 18-9-91 की अधिसूचना सं. 1 (7)/विशेष कक्ष/88-एस. एस. II (ख) का अधिक्रमण किया जाता है।

[सं. 1 (7)/विशेष कक्ष/88-एस. एस. II (ख)]

एस. के. चट्टोपाध्याय, मुख्य बंदोबस्त आयुक्त

New Delhi, the 2nd February, 1999

S.O. 730.—In exercise of the powers conferred on me under Sub-Section (2) of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), I, S. K. Chattopadhyay, Chief Settlement Commissioner do hereby delegate to Shri Sajjan Singh, Special Secretary in the Rehabilitation Department of the Government of Haryana, exercising the powers of Settlement Commissioner, the powers conferred on the Chief Settlement Commissioner under Section 23, 24, 28 and 35 of the said Act in so far as such powers may be exercised in respect of rural and urban evacuee lands and properties situated in Haryana State.

2. This supersedes Notification No. 1(7)/Spl. Cell/88-SS.II(B), dated 18th September, 1991.

[No. 1(7)/Spl. Cell/88-SS.II(S(B))]

S. K. CHATTOPADHYAY, Chief Settlement Commissioner

नई दिल्ली, 2 फरवरी, 1999

का. आ. 731.—विस्थापित व्यक्ति (प्रतिकर तथा पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा 34 की उपधारा (2) द्वारा मुझे प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, एस. के. चट्टोपाध्याय, मुख्य बंदोबस्त आयुक्त, एतद्वारा उक्त अधिनियम के अंतर्गत बनाए गए नियम 87, 88, 90 (1) (क), 90 (1) (ख), 90 (11), 90 (12), तथा 101 के अधीन प्रयोग किए जाने के लिए बंदोबस्त आयुक्त श्री सज्जन सिंह, विशेष सचिव, पुनर्वास विभाग, हरियाणा सरकार को क्षतिपूर्ति पूल के एक भाग फरीदाबाद, एत. आई. टी. सहित सभी भूमि व सम्पत्ति, जो प्रशासकीय व वित्तीय प्रबंधों के अंतर्गत हरियाणा

सरकार को अंतरित की गई थी, के निपटान हेतु शक्तियाँ सौंपता हूँ।

2. यह अधिसूचना सं. 1 (7) / विशेष कक्ष/88-एस. एस. II (ग) दिनांक 18-9-91 के अधिक्रमण से जारी की गई है।

[सं. 1 (7)/विशेष कक्ष/88-एस. एस. II/एस. (ग)]

एस. के. चट्टोपाध्याय, मुख्य बंदोबस्त आयुक्त

New Delhi, the 2nd February, 1999

S.O. 731.—In exercise of the powers conferred on me by Sub-Section (2) of Section 34 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), I, S. K. Chattopadhyay, Chief Settlement Commissioner, hereby delegate powers under rules 87, 88, 90(1)(a), 90(1)(b), 90(11), 90(12) and 101 framed under the said Act, to Shri Sajjan Singh, Special Secretary, Rehabilitation Department, Government of Haryana, exercising the powers of the Settlement Commissioner for the purpose of disposal of all lands and properties including those in Faridabad N.I.T. forming part of the compensation pool, which was transferred to the Government of Haryana, under Administrative and Financial arrangements.

2. This supersedes notification Nos 1(7)/Spl. Cell/88-SS. II(C) dated 18th Sept., 1991

[No. 1(7)/Spl. Cell/88-SS.II(S(C))]

S. K. CHATTOPADHYAY, Chief Settlement Commissioner

नई दिल्ली, 2 फरवरी, 1999

का. आ. 732.—निष्क्रान्त सम्पत्ति प्रबन्ध अधिनियम, 1950 (1950 का XXXI) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा विशेष सचिव, पुनर्वास विभाग, हरियाणा सरकार को उक्त अधिनियम के द्वारा अथवा उसके अधीन सहायक महाभिरक्षक को सौंपे गए दायित्वों का निर्वहण करने के उद्देश्य से हरियाणा राज्य में स्थित निष्क्रान्त सम्पत्ति के सहायक महाभिरक्षक के रूप में नियुक्त करती है।

2. इसके द्वारा दिनांक 18 सितम्बर, 1991 की अधिसूचना सं. 1 (7)/विशेष कक्ष/88-एस. एस. II/एस (घ) का अधिक्रमण किया जाता है।

[सं. 1 (7)/विशेष कक्ष/88-एस. एस. II/एस (घ)]

कुल सिंह, निदेशक (ग्राम-I)

New Delhi, the 2nd February, 1999

S.O. 732.—In exercise of the powers conferred by Section 5 of the Administration of Evacuee Property Act, 1950 (XXXI of 1950), the Central Government hereby appoint Shri Sajjan Singh, Special Secretary, Rehabilitation Department, Government of Haryana, as the Assistant Custodian General of Evacuee Pro-

erty situated in the State of Haryana for the purpose of discharging the duties imposed on such Assistant Custodian General by or under the said Act.

2. This supersedes Notification No. 1(7)|Spl. Cell|88-SS. II|S(D) dated 18-9-1991.

[No. 1(7)|Spl. Cell|88-SS. II|S(D)]
PHOOL SINGH, Director (R-I)]

नई दिल्ली, 2 फरवरी, 1999

का. आ. 733 —निष्क्रान्त संपत्ति प्रबंध अधिनियम, 1950 (1950 का 31) की धारा 55 की उपधारा 3 द्वारा सृष्ट, महाभिरक्षक के रूप में प्रदत्त शक्तियों का प्रयोग करते हुए मैं, एस. के. चट्टोपाध्याय, महाभिरक्षक एतद्-द्वारा इस विभाग की अधिसूचना सं. 1 (7)/विशेष कक्ष/88—एस. एस. II/एस (ग) दिनांक 2-2-1999 के अधीन नियुक्त किए गए सहायक महाभिरक्षक को हरियाणा राज्य के महाभिरक्षक की निम्नलिखित शक्तियां सौंपता हूँ:—

- (1) उक्त अधिनियम की धारा 24 एवं 27 के अंतर्गत शक्तियां।
- (2) अधिनियम की धारा 10 (2) (O) के अंतर्गत किसी निष्क्रान्त संपत्ति के हस्तांतरण का अनुमोदन करने की शक्तियां।
- (3) निष्क्रान्त संपत्ति प्रबंध (केन्द्रीय) नियम, 1955 के नियम 30—क के अंतर्गत मामलों के हस्तांतरण की शक्तियां।

2. इसके द्वारा दिनांक 18-9-1991 की अधिसूचना सं. 1 (7)/विशेष कक्ष/88 एस. एस. II (क) का अतिरिक्त किया जाता है।

[सं. 1 (7)/विशेष कक्ष/88—एस. एस. II/एस. (क)]
एस. के. चट्टोपाध्याय, महाभिरक्षक

New Delhi, the 2nd February, 1999

S.O. 733.—In exercise of the powers conferred on me as Custodian General by Sub-Section 3 of Section 55 of the Administration of Evacuee Property Act, 1950 (31 of 1950), I, S. K. Chattopadhyay, Custodian General, hereby delegate to the Assistant Custodian General for the State of Haryana, appointed vide Notification No. 1(7)|Spl. Cell|88-SS-II|S(D), dated 2-2-1999, the following powers of the Custodian General :—

- (i) Powers under Sections 24 and 27 of the Act.
- (ii) Powers of approval of transfer of any evacuee Property under Section 10(2)(O) of the Act.
- (iii) Powers of transfer of cases under Rule 30-A of the Administration of Evacuee Property (Central) Rules, 1955.

2. This supersedes Notification No. 1(7)|Spl. Cell|88-SS. II|(E), dated 18-9-1991.

[No. 1(7)|Spl. Cell|88-SS-II|S(E)]
S. K. CHATTOPADHYAY, Custodian General

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

(प्रशिक्षण प्रभाग)

नई दिल्ली, 26 फरवरी, 1999

का.आ. 734 —केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधि. 1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और इस विभाग के का.आ. सं. 2374 तारीख 18 अक्टूबर, 1993 को अधिग्रहित करते हुए, नीचे दी गई सारणी के स्तम्भ (1) में उल्लिखित अधिकारी को, जो सरकार का राजपत्रित अधिकारी है, जो उक्त सारणी के स्तम्भ (2) की तस्थानी प्रविष्टि में विनिर्दिष्ट सरकारी स्थान की बाबत उक्त अधिनियम द्वारा या उसके अधीन संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग और उस पर अधिरोपित कर्तव्यों का पालन करेगा।

सारणी

अधिकारी का पदनाम

सरकारी स्थानों के प्रबन्ध और अधिकारिता की स्थानीय सीमाएं

(1)

(2)

सचिवालय प्रशिक्षण और प्रबन्ध संस्थान, नई दिल्ली के प्रशासन अनुभाग का भारमाधक अधिकारी

एसे परिसर, जो संस्थान और प्रशिक्षण प्रभाग के कर्मचारीवृन्द के किसी सदस्य को निवास स्थान उपलब्ध कराने के लिए केन्द्रीय सरकार द्वारा सचिवालय प्रशिक्षण और प्रबन्ध संस्थान और कार्मिक और प्रशिक्षण विभाग के प्रशिक्षण प्रभाग के नियंत्रणाधीन रखे गए हैं।

[सं. 13038/4/98-प्रशिक्षण]

कल्पना अग्रम, उप सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS

(Department of Personnel & Training)

(Training Division)

New Delhi, the 26th February, 1999

S.O. 734.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) and in supersession of this Department's Statutory Order, 2374 dated 18th October, 1993, the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being gazetted officer of the Government to be estate officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on estate officer by or under the said Act in respect of the public premises specified in the corresponding entry in column (2) of the said Table.

TABLE

Designation of the Officer	Categories of Public premises and local limits of jurisdiction.
(1)	(2)
Section Officer incharge Administration Section, Institute of Secretariat Training and Management, New Delhi.	Premises which have been placed by the Central Government under the control of the Institute of Secretariat Training and Management, New Delhi and the Training Division of the Department of Personnel & Training for providing residential accommodation to any member of the staff of the Institute and the Training Division.

[No. 13038/4/98-Trg.]

KALPANA AMAR, Dy. Secy.

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय

कोयम्बतूर, 22 फरवरी, 1999

संख्या : 01/99 सीमा शुल्क (एन टी)

का.आ. 735.—सीमा शुल्क अधिनियम 1962 की धारा 152 खण्ड (ए) के अंतर्गत भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के दिनांक 1 जुलाई, 1994 की अधिसूचना संख्या 33/94 सीमा शुल्क (एन टी) के अधीन अधोहस्ताक्षरी को प्रत्यायोजित शक्तियों का प्रयोग करते हुए मैं, ए. के. मेहता, आयुक्त, सीमा शुल्क एवं केन्द्रीय उत्पाद शुल्क, कोयम्बतूर एतद्वारा तमिलनाडु राज्य, ईरोड जिला, पेरुन्दुरै तालुक, केकरुमंडी चेन्निपालयम ग्राम को सीमा शुल्क अधिनियम 1962 की धारा 9 के अंतर्गत 100% निर्यातानुसृत एकक (ई. ओ. यू.) के गठन के उद्देश्य से भाण्डागारण स्टेशन के रूप में घोषित करता हूँ। जैसा कि उद्योग मंत्रालय, औद्योगिक सहायता सचिवालय, नई दिल्ली द्वारा अनुमोदित है।

[फाइल नं. VIII/40/01/99—सीमा शुल्क—निति]

ए. के. मेहता, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE

Coimbatore, the 22nd February, 1999

No. 01/99-CUSTOMS (NT)

S.O. 735.—In exercise of the powers delegated to the undersigned vide Notification No. 33/94-Cus. (NT) dated 1st July, 1994 by the Government of India. Ministry of Finance, Department of Revenue, New Delhi under clause (a) of Section 152 of the Customs Act, 1962, I, A. K. MEHTA, COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE, COIMBATORE, hereby declare KARUMANDI CHELLIPALAYAM VILLAGE, PERUNDURAI TALUK, ERODE DISTRICT, State of Tamilnadu, to be a warehousing station under Section 9 of the Customs Act, 1962 for the purpose of setting up of 100 per cent Export Oriented Unit, as approved by the Ministry of Industries, Secretariat for Industrial Assistance, New Delhi.

[File C. No. VIII/40/01/99-Cus. Pol.]

A. K. MEHTA, Commissioner

कार्यालय आयुक्त, केन्द्रीय उत्पाद एवं सीमा शुल्क

इंदौर, 16 फरवरी, 1999

का.आ. 736.—श्री एस. एल. बैरवा, प्रशासनिक अधिकाारी केन्द्रीय उत्पाद शुल्क, समूह "ब" इन्दौर आयुक्तालय का दिनांक 07-02-99 को देहांत हो गया ।

[(फा. सं. II(3)/9-गोप/93]

चन्द्रशेखर प्रसाद, अपर आयुक्त (कार्मिक एवं सतर्कता)

OFFICE OF THE COMMISSIONER OF CENTRAL
EXCISE & CUSTOMS

Indore, the 16th February, 1999

S.O. 736.—Shri S. L. Bairwa, Administrative Officer, Central Excise Group 'B' of Indore Commissionerate expired on 07-02-1999.

[F. No. II(3)9-Con/93]

C. S. PRASAD, Addl. Commissioner (P&V)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 26 फरवरी, 1999

का.आ. 737.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की संसुति पर, एतद्वारा—घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) (ग) (झ) के उपबंध इंडियन बैंक के मामले में, जहाँ तक इसका संबंध इंडियन बैंक के अध्यक्ष एवं प्रबंध निदेशक श्री टी. एस. राघवन की निम्नलिखित बोर्डों में निदेशक के रूप में नियुक्ति से है, लागू नहीं होंगे।

(i) इंडियन आपरेश्युनिटिज फण्ड लि., बरमूडा ।

(ii) इंडियन आपरेश्युनिटिज फण्ड (मारिशस) लि. मारिशस और

(iii) इन्वेस्को इण्डियन ग्रोथ फण्ड ।

[फा. सं. 20/9/95—बी. ओ.—I]

के. के. मंगल, अवर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 26th February, 1999

S.O. 737.—In exercise of powers conferred by section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendations of the Reserve Bank of India, hereby declares that the provisions of sub-section (1)(c)(i) of section 10 of the said Act shall not apply to Indian Bank in so far as it relates to the appointment of Shri T. S. Raghavan, Chairman and Managing Director, Indian Bank as a Director on the Boards of the following:—

(i) Indian Opportunities Fund Ltd., Bermuda,

(ii) Indian Opportunities Fund (Mauritius) Ltd., Mauritius and

(iii) Invesco Indian Growth Fund.

[F. No. 20/9/95-BO-I]

K. K. MANGAL, Under Secy.

उद्योग मंत्रालय

(भारी उद्योग विभाग)

नई दिल्ली, 15 फरवरी, 1999

का. आ. 738.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में निम्नलिखित कार्यालयों को जिसके 80% कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है:—

(i) हिन्दुस्तान न्यूजप्रिंट लिमिटेड
(हिन्दुस्तान पेपर कारपोरेशन लि.
की सहायक कंपनी)
भारत सरकार एक उपग्राम
न्यूजप्रिंट नगर—686616
जिला—कोट्टयम, केरल

(ii) प्रागा टूल्स लिमिटेड
भारत सरकार का एक उपग्राम,
एच. एम. टी. लिमिटेड की
एक सहायक कंपनी
6-6-8/32, कवाडीगुडा रोड,
सिकन्दराबाद—500080 (आ. प्र.)

[सं. ई—11012(1)/92—हिन्दी]

बी. एस. नेगी, अवर सचिव

MINISTRY OF INDUSTRY

(Department of Heavy Industry)

New Delhi, the 15th February, 1999

S.O. 738.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices whereof 80 per cent staff have acquired the working knowledge of Hindi:—

(i) Hindustan Newsprint Ltd.
(A Subsidiary of Hindustan
Paper Corporation Ltd.,) A
Govt. of India Enterprises
Newsprint Nagar-686 616
Kottayam Distt. Kerala

(ii) Praga Tools Ltd.,
A Govt. of India Undertaking-
A Subsidiary of HMF Ltd.,
6-6-8/32, Kavadiyuda Road,
Secunderabad-500 050 (A.P.).

[No. E-11012(1)/92 Hindi]

B. S. NEGI, Under Secy.

नागर विमानन मंत्रालय

नई दिल्ली, 15 फरवरी, 1999

का.आ. 739.— केन्द्र सरकार सावजनिक स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा भारत सरकार, नागर विमानन मंत्रालय की अधिसूचना का.आ. संख्या 2687 दिनांक 07 अक्टूबर, 1995 के अधिष्ठापण में, उन बातों को छोड़कर जो ऐसे अधिष्ठापण से पूर्व हो चुकी हों अथवा जिन्हें किया जाना छोड़ दिया गया हो एतद्वारा नीचे दी गई सारणी के स्तम्भ (1) में दर्शाए गए अधिकारियों को जो कि सरकार के राजपत्रित अधिकारी के रैंक के समकक्ष हैं, उक्त अधिनियम के उद्देश्य हेतु सम्पदा अधिकारी नियुक्त करती है जो कि इस सारणी के स्तम्भ (2) में विनिर्दिष्ट सावजनिक स्थानों के संबंध में अपने संबंधित कार्य क्षेत्र के भीतर उक्त अधिनियम द्वारा अथवा इसके अधीन सम्पदा अधिकारी पर अधिरोपित शक्तियों का पालन करेगा एवं प्रदत्त शक्तियों का प्रयोग करेगा।

सारणी

अधिकारी का पदनाम	सावजनिक स्थानों की श्रेणियां
1	2
1. वरिष्ठ प्रबन्धक (मानव संसाधन विकास), एयर इंडिया लिमिटेड, इंदिरा गांधी अन्तर्राष्ट्रीय विमानपत्तन, दिल्ली	हरियाणा, हिमाचल प्रदेश, जम्मू और काश्मीर, पंजाब राजस्थान, उत्तर प्रदेश राज्यों राष्ट्रीय राजधानी क्षेत्र दिल्ली, चण्डीगढ़ संघ राज्य क्षेत्र में एयर इंडिया लिमिटेड द्वारा अथवा इसकी ओर से पट्टे पर लिये गए हैं अथवा इसके अपने सभी स्थान।
2. वरिष्ठ प्रबन्ध पूर्वी भारत, एयर इंडिया लिमिटेड, कलकत्ता	आसाम, बिहार, मेघालय, मिजोरम, नागालैण्ड, उड़ीसा सिक्किम, त्रिपुरा पश्चिमी बंगाल, राज्यों अण्डमान और निकोबार में संघ राज्य क्षेत्र में एयर इंडिया लिमिटेड द्वारा अथवा इसकी ओर से पट्टे पर लिये गए हैं अथवा इसके अपने सभी स्थान।
3. वरिष्ठ प्रबन्धक, (मानव संसाधन विकास) एयर इंडिया लिमिटेड, चेन्नै	आन्ध्र प्रदेश, कर्नाटक, केरल तमिलनाडु, राज्यों और पांडिचेरी संघ राज्य क्षेत्र के वे सभी स्थान जो एयर इंडिया लिमिटेड द्वारा अथवा इसकी ओर से पट्टे पर लिए गए हैं अथवा इसके अपने हैं।
4. वरिष्ठ प्रबन्धक, (मानव संसाधन विकास), एयर इंडिया लिमिटेड, मुख्यालय, मुम्बई	उपरोक्त क्रमसंख्या 1, 2 और 3 में उल्लिखित स्थानों को छोड़कर पूरे भारत में सभी गैर-आवासीय स्थान जो एयर इंडिया लिमिटेड द्वारा अथवा इसकी ओर से पट्टे पर लिये गए हैं अथवा इसके अपने हैं।
5. प्रबन्धक (मानव संसाधन विकास), एयर इंडिया लिमिटेड, पुराना विमानपत्तन, मुम्बई	उपरोक्त क्रमसंख्या 1, 2 और 3 में उल्लिखित स्थानों को छोड़कर पूरे भारत में सभी आवासीय स्थान जो एयर इंडिया लिमिटेड द्वारा अथवा इसकी ओर से पट्टे पर लिए गए हैं अथवा इसके अपने हैं।

MINISTRY OF CIVIL AVIATION

New Delhi, the 15th February, 1999

S.O. 739.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971) and in supersession of Notification of the Government of India in the Ministry of Civil Aviation S. O. 2687 dated 7th October, 1995, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officers mentioned in column (1) of the Table below, being officers equivalent to the rank of the gazetted officer of the Government, to be estate officer for the purposes of the said Act, who shall exercise the powers conferred and perform the duties imposed on the estate officers by or under the said Act, within the limits of their respective jurisdiction in respect of the public premises specified in column (2) of the said Table.

TABLE

Designation of the officer	Categories of public premises
(1)	(2)
1. Senior Manager (Human Resource Development), Air India Limited, Indira Gandhi International Airport, Delhi.	All premises belonging to or taken on lease by or on behalf of Air India Limited in the States of Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan, Uttar Pradesh, National Capital Territory of Delhi, the Union Territory of Chandigarh.
2. Senior Manager-Eastern India, Air India Limited, Calcutta.	All premises belonging to or taken on lease by or on behalf of Air India Limited in the States of Assam, Bihar, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, West Bengal, the Union Territory of the Andaman and Nicobar.
3. Senior Manager, (Human Resource Development), Air India Limited, Chennai.	All premises belonging to or taken on lease by or on behalf of Air India Limited in the States of Andhra Pradesh, Karnataka, Kerala, Tamilnadu and the Union Territory of Pondicherry.
4. Senior Manager, (Human Resource Development), Air India Limited, Headquarters, Mumbai	All Non-residential premises belonging to or taken on lease by or on behalf of Air India Limited throughout India except those mentioned at serial number 1, 2 and 3.
5. Manager, (Human Resource Development), Air India Limited, Old Airport, Mumbai.	All Residential premises belonging to or taken on lease by or on behalf of Air India Limited throughout India except those mentioned at serial numbers 1, 2 and 3.

[F.No. AV. 18050/02/97-AA]

PRAKASH CHANDRA, Under Secy.

जल-भूतल परिवहन मंत्रालय
(नौवहन पक्ष)

नई दिल्ली, 19 फरवरी, 1999

का.भा. 740.—दीपघर केन्द्रीय सलाहकार समिति (प्रक्रियारमक) नियमावली 1976 के नियम 3, 4 और 11 के साथ पठित दीपघर अधिनियम, 1927 (1927 का 17) की धारा 4 की उपधारा (1) के अनुसरण में केन्द्र सरकार एतद्वारा 20 फरवरी, 1999 से दो वर्ष

की अवधि के लिये केन्द्रीय दीपघर सलाहकार समिति की नियुक्ति करती है, जिसमें निम्नलिखित व्यक्ति होंगे :—

सदस्यता :

1. सचिव, जल-भूतल परिवहन मंत्रालय पदेन सदस्य :
2. अपर सचिव एवं वित्त सलाहकार, जल-भूतल परिवहन मंत्रालय पदेन

3. भारत सरकार के नीचालम सलाहकार, पदेन
नीचालम महानिदेशालय, मुंबई

MINISTRY OF SURFACE TRANSPORT
(Shipping Wing)

4. भारत सरकार के मुख्य जलराशिक पदेन
सर्वेक्षक, नीचेना जलराशिक सर्वेक्षण
कार्यालय, देहरादून

New Delhi, the 19th February, 1999

S.O. 740.---In pursuance of Sub-Section (1) of Section 4 of the Lighthouse Act, 1927 (No. 17 of 1927) read with Rules 3, 4 and 11 of the Central Advisory Committee for Lighthouses (Procedural) Rules, 1976, the Central Government hereby appoints for a period of two years with effect from 20th February, 1999 the Central Advisory Committee for Lighthouses, comprising the following persons, namely:—

5. श्री देवजी भाई जे. टंडेल, संसद सदस्य (लोक सभा)			
6. श्री वयालार रवि, संसद सदस्य (राज्य सभा)			
7. श्री पी. पलेरी, उपमहानिरीक्षक, निदेशक (प्रचालन) तट रक्षक मुख्यालय, नेशनल स्टेडियम परिसर, नई दिल्ली-110001	तट रक्षकों के प्रतिनिधि	CHAIRMAN	1. Secretary, Ministry of Surface Transport Ex-officio
8. कैप्टन जी. अस्थाना, उप महाप्रबंधक, (प्लीट कार्मिक), भा. नौ. नि. सि. मुंबई	इंडियन नेशनल शिपयानर्स एसो- सिएशन के प्रतिनिधि	MEMBERS	2. Additional Secretary & Fin. Adviser, Ministry of Surface Transport Ex-officio
9. कैप्टन बी. एस. कुमार, निदेशक एस्सार शिपिंग लि. एस्सार हाउस, मुंबई	—तद्वय—		3. Nautical Adviser to the Government of India Ex-officio Dte. General of Shipping, Mumbai.
10. श्री बी. के. दत्ता, उपसंरक्षक, विशाखापत्तनम, पत्तन न्यास, विशाखापत्तनम	भाई पी ए के प्रतिनिधि		4. Chief Hydrographer to the Government of India, Ex-officio Naval Hydrographic Office, Dehradun.
11. कंपनी आफ मास्टर मैरीनर्स आफ इंडिया के प्रतिनिधि			5. Shri Devjibhai J. Tandel Member of Parliament (Lok Sabha)
12. श्री एस. उमालदराज महासचिव, कोस्टल सेल वेंसल यानर्स एसोसिएशन, 31, साउथ राजा स्ट्रीट, तूतीकोरिन-628001	पूर्वी तट के लिए मेलिंग वेंसल हिसों के प्रतिनिधि		6. Shri Vayalar Ravi, Member of Parliament, (Rajya Sabha)
13. श्री हीरेन ए. देसाई माननीय महा सचिव फेडरेशन आफ आल इंडिया सेलिंग वेंसल इंडस्ट्री एसोसिएशन, मैजनाइन फ्लोर, 375, कल्या बाजार, मुंबई-400009	पश्चिमी तट के लिये सेलिंग वेंसल हिसों के प्रतिनिधि		7. Shri P. Paleri, DIG, Director (Operations) Coast Guard Hqrs. National Stadium Complex New Delhi-110001 Representative of Coast Guard
14. फेडरेशन आफ इंडियन चैम्बर्स आफ कामर्स एंड इंडस्ट्री के प्रतिनिधि			8. Capt. G. Asthana, Dy. General Manager (Fleet Personnel), SCI Ltd., Mumbai. Representative of Indian National Shipowners' Association
15. एसोसिएटेड चैम्बर्स आफ कामर्स एंड इंडस्ट्री के प्रतिनिधि			9. Capt. B.S. Kumar, Director Essar Shipping Ltd., Essar House Mumbai. -do-
16. दीपधर गौर दीपपोत महानिदेशक, नई दिल्ली।	मदम्य सचिव		10. Shri V.K. Dutta, Dy. Conservator Vishakhapatnam Port Trust, Vishakhapatnam. Representative of Indian Ports Association

[फा. सं. एन एच-11016/1/98-एसएल]

सार. के. नर्मदा शर्मा सचिव

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, 27th January, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 24/1987

I PARTY

Shri B. Viswanatha Rao,
S/o B. Rama Rao,
No. 66, I 'R' Block,
Rajajinagar,
Bangalore.

II PARTY

The Chairman-cum-Mg. Director,
Canara Bank, No. 112,
J. C. Road,
Bangalore-560002.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/14/84-D.II(A) dated 9-11-1984 for adjudication on the following schedule.

SCHEDULE

"Whether the Management of Canara Bank is justified in discharging Shri B. Viswanatha Rao, Clerk, Town Hall Branch, Bangalore-2 w.e.f. 11-4-1981? If not, to what relief the workman is entitled to?"

2. The first party was serving as a Clerk in the Town Hall Branch during 1974 in Savings Bank Section. He was charge sheeted for having committed the offences enumerated in the articles of charge Ex. M-1. The allegation of charge in brief was that on 15-3-1974 when he was working in S.B. department issued 3 cheque books without taking signatures of the persons who have obtained the cheque book and the cheque leaves 532161-170 was issued to the person who was not the account holder but was given SB 3701 an account held by one Mr. Philip. This workman put a flower bracket against the Sl. No. 53 to 57 noted in the cheque issue register and shown one initial only. On 16-7-74 cheque No. 532200 in respect of SB 3701 of Mr. Philip was presented for Rs. 18,000 and the amount was paid on 17-7-74.

3. It is also alleged that he has made some interpolation in S.B. ledger containing SB 3701 and the necessary entries in the pass book of Mr. Philip was not filled and given for a long period. It is also alleged of creating a new ledger page in the account of Mr. Philip and also made entry in the subsidiary ledger relating to this account. Therefore he was charged for having committed misconduct under Chapter XI, Regulation 3, Clause (i), (m) of Canara Bank Service Code. The first party has not met the allegation of charge by giving any explanation but he has only stated in his explanation Ex. M-2, that he has no reasonable explanation to offer as he is not expected to give any explanation and he is at liberty to take his explanation during the enquiry if any conducted.

4. The second party examined altogether 5 witnesses and got marked 7 documents. The first party represented by a defence representative, has examined himself and 2 witnesses on his behalf. The enquiry officer after affording full opportunity has prepared a report on 25-8-80. Since Canara Bank Service Code empowered the enquiry officer to propose appropriate punishment he has suggested the punishment of discharge as provided under Chapter XI, Regulation 4, Clause (f) of the Canara Bank Service Code. By the same order an opportunity of hearing on the proposed punishment at Madras on 16-9-80 was accorded. The very enquiry officer heard the first party and by an order dated 7-10-80 he has proposed the punishment of discharge by another order. The Deputy General Manager as Disciplinary Authority agreed with the finding and recommendations of the enquiry officer

11. Representative of the
Company of Master
Mariners of India

12. Shri S. Ubaldraj, Representative of
General Secretary, Sailing Vessels
Coastal Sail Vessel Interests for
Owners Association, East Coast,
31, South Raja Street,
Tuticorin-628001.

13. Shri Hiren A. Desai, Representative of
Hon'ble General Secretary, Sailing Vessels
Federation of All India Interests for West
Sailing Vessels Industry Coast.
Associations, Mazz Floor,
375, Katna Bazar,
Mumbai-400009.

14. Representative of Federation
of Indian Chambers of
Commerce & Industry.

15. Representative of the
Associated Chambers of
Commerce & Industry.

16. Director General of Member Secretary
Lighthouses & Lightships,
New Delhi.

[F.No.LH-11016/1/98-SL]

R. K. SHARMA, Under Secy.

अम मंत्रालय

नई दिल्ली, 15 फरवरी, 1999

का. आ. 741:—औद्योगिक विवाद अधिनियम,
1947 (1947 का 14) की धारा 17 के अनुसरण में,
केन्द्रीय सरकार केन्द्र बैंक के प्रबन्धन के संबंध में
और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक
विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलौर के
पंचाट की प्रकाशित करती है, जो केन्द्रीय सरकार की 15-02-99
की प्राप्त हुआ था।

[सं. एल.-12012/14/84-डी II (ए)]

सी. गंगाधरन, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 15th February, 1999

S.O. 741.—In pursuance of Section 17 of the Industrial
Dispute Act, 1947 (14 of 1947), the Central Government
hereby publishes the award of the Central Government In-
dustrial Tribunal, Bangalore as shown in the Annexure in the
Industrial Dispute between the employers in relation to the
management of Canara Bank and their workman, which
was received by the Central Government on 15-02-99.

[No. L-12012/14/84-DII(A)]

C. GANGADHARAN, Desk Officer

and imposed the punishment "MISCONDUCT CONDONED AND BE MERELY DISCHARGED". A Review petition against this order before the Chairman and Members of the Board of Directors came to be rejected and confirmed the order of discharge.

5. The first party in his claim statement which runs to altogether 24 pages has initially questioned that Canara Bank Service Code is not applicable as the bank is governed by Bipartite Settlement and other Awards and therefore the second party has no jurisdiction to proceed against him under the service code. Secondly he has questioned the validity of domestic enquiry on the ground the enquiry officer has not followed the principles of natural justice, settled principles of law and fairness. Lastly he has contended the perversity in the findings, discrimination and unfair labour practice.

6. The second party in their objection statement have initially justified the conduct of the domestic enquiry in accordance with principles laid down under Canara Bank Service Code, to which the first party was the signatory and they have also justified the fairness of domestic enquiry and resultant report passed against the first party.

7. It is an irony that I recorded the evidence to give a finding on the validity of domestic enquiry and an order was passed on 16-1-1987 holding that the domestic enquiry was fair and proper. Though a final decision would have been given within a couple of months from that date it is unfortunate that no order was passed on merits till the end of 1988. In fact both parties not appeared, may be due to frustration. On assuming this office a fresh notices were issued and both parties made their appearance on 8-1-99. The case was posted to address arguments on 22-1-99. On that day this tribunal verified this bulk records and found that first party filed their written arguments on 6-9-96 and the second party filed the written arguments on 10-9-96. Therefore in the presence of learned advocates the case is posted for passing an Award.

8. The order sheet discloses that during 1987 a Writ Petition No. 12319/87 was filed and the Hon'ble High Court has stayed all further proceedings in this reference. There is also change of jurisdictional court as it was transferred to C.G.I.T. a newly established court and the reference is renumbered to C. R. No. 24/87 from C. R. No. 31/84. However the order of stay was vacated by the Hon'ble High Court on 16-7-92.

9. Some interlocutory orders appears to have been passed on 29-6-87 rejecting the application filed by the first party to summon the report of the investigation and an enquiry filed relating to Late E. T. Bhaskaran against how the disciplinary action was taken. This tribunal held in its order dated 13-7-87 that the documents were not relevant for the purpose of considering the points of perversity of findings or the alleged victimisation of the worker or about the magnitude of the punishment.

10. The record further discloses that after giving a finding on the validity of domestic enquiry the first party was further examined and cross-examined. In addition the first party has examined 2 witnesses, obviously to prove victimisation and the second party examined one more witness.

11. Since the case is passed the first stage of giving a finding on the validity of domestic enquiry the other contention raised by the first party is required to be examined.

12. Initially the first party from the stage of filing his explanation to the charge sheet, is harping that the authorities lacked jurisdiction to conduct the enquiry which is not in accordance with Bi-partite Settlements, as according to the first party the Canara Bank Service Code is not applicable. This fact is opposed by the second party, as according to them the first party is a signatory to the service code and therefore it is not open for him to challenge the same. Though the first party made much of it, he has not placed any material to justify his stand. Since the first party came up with such plea the burden is on him to prove such situation. Since he has failed to prove this fact, the averments without proof can not be accepted.

13. As I said earlier the first party has contended that though there is no evidence that he has instrumental in issuing the cheque book, passing a cheque for Rs. 18,000 and writing the ledgers, the report of the enquiry officer is perverse. It is also contended that the material evidence in favour of the first party is not taken into consideration and therefore the report is nothing but a perverse finding.

14. The next contention is that the management are guilty of practicing victimisation and unfair labour practice.

15. As it regards to the perversity of the report it is contended by the first party that his co-employee Smt. Lalitha Kumari and Shri E. T. Bhaskaran are responsible and though the evidence is available to that extent the enquiry officer has not taken this fact into consideration.

16. It is to be noted that the first party has not gave his explanation to the charge sheet Ex. M-1. As we observed earlier his reply Ex. M-2 does not show his ignorance or in giving the material who is responsible for the events stated in the charge sheet. It can not be disputed that the allegations made in the charge sheet did occurred in the bank during the period alleged in the charge sheet. It is not in dispute that the first party was working in the SB counter. It is significant to note that in all fairness the first party would have come with some material to throw some light on the alleged offence. It is to be noted that an explanation to a charge sheet will play an important roll which can be compared to written statement filed under order 8 Rule 1 of the civil procedure code. This explanation is always a defence and the person can always take this facts as his defence, as the same is made at the first opportunity provided to him. But the first party has improved his defence from phase to phase as and when the witnesses examined by the second party during the domestic enquiry.

17. In the written argument filed by the first party on 10-9-96, the first party elaborately dealt with several aspects emanating from the evidence and those things required to be taken into consideration for his defence. According to him the evidence on record is not proved the charges and therefore the finding is perverse. It is also stated there is no evidence regarding the hand writing appearing in the document and therefore they are not reliable to pin point the guilt on the first party.

18. As against this statement the second party in their written argument have contended that to prove the charges, the second party examined 5 witnesses who were also cross-examined by the defence and the enquiry officer by analysing the evidence of each witnesses reached a conclusion. It is further contended that the jurisdiction of the tribunal in regard to the finding recorded in domestic enquiry is limited. Such jurisdiction can be exercised if it finds that the enquiry officer has given his finding without their being any evidence on record or when the finding is totally opposed to the evidence on record.

19. It is no doubt true in a domestic enquiry strict rules of evidence are not applicable and on some occasions circumstantial and hearsay evidence can be made admissible depending upon the facts of the case. The preponderance of probabilities to reach a reasonable conclusion can be made use of to decide the issue in question.

20. The enquiry officer has analysed the evidence in his report to the extent it is necessary and also taken into consideration the evidence placed by the first party as defence witnesses. The enquiry officer also taken into consideration that the SB account was also handled by one Vasanth Kumari and Supervisor. The evidence discloses that the approach of the first party is negative in character. Some witnesses for the second party have stated in the Cross-examination expressing their inability to say that the hand writing found in the entries is that of first party or any other person. But it is not established who is the author of these disputed entries. No doubt the first party has taken up almost all the contentions available under law. On a perusal of cross-examination of management witnesses a great length of evidence relates to procedural aspect of the matter and some of the

answers are negative in character. Since the first party is throwing the blame on one E. T. Bhaskaran and Smt. Lalitha Kumari it is necessary to advert to this evidence.

21. The Clerk, Lalitha Kumari was working in SB section. She has said in her evidence that she has not passed the cheque 552200 dated 16-7-74 for Rs. 18,000. Nothing was elicited in cross-examination in favour of the first party.

22. Shri E. T. Bhaskaran, was also examined as one of the witness who was working as a Supervisor at that time. He has also shown his ignorance as to issue of cheque book from item No. 52 to 58. Shri H. R. Mallaya, Manager was examined as first witness by the second party. On the visit of Mr. Philip, the account holder of SB 3701 he came to know the issue of cheque books found in Sl. Nos. 52 to 58 without taking the signatures and also other subsequent events. He has stated that the first party was handling SB ledger related to account No. 3701 on 16-7-74 and 17-7-74. On further perusal of cross-examination this witnesses also shown a tendency of not supporting the management on material points. Of course the evidence of Shri Philip is only to the extent that a cheque book was given to a stranger getting his account number and forged cheque leave was used with forged signature to draw a sum of Rs. 18,000 from his account.

23. In these circumstances the enquiry officer was made to pick some of the evidence which pointed out the involvement of the first party and thereby came to the conclusion that sum total of evidence pointed out the probability of first party involvement as it does not point out to any other person as being involved in these events. Therefore interference can not be made to the conclusion reached by the enquiry officer.

24. The next contention of the workman is victimisation and unfair labour practice. With regard to this contention the first party has not placed necessary pleadings in his claim statement. His contention all along the statement is the defective enquiry, wrongly invoking the Canara Bank Service Code, non-application of mind by the Appellate Authority and the Revisional Authority.

25. In fact an application filed by him dated 29-6-1987, as it relates to summoning of entire enquiry file relating to institution of disciplinary proceedings against late Shri E. T. Bhaskaran was rejected by my learned predecessor vide order dated 30-7-87, while rejecting this application it is made clear in the order that the charge sheet against Bhaskaran was of different nature who was Special Assistant with difference kinds of duties and he (Bhaskaran) was called upon to explain as to why he has not compared the signature of the drawer with the specimen signature of account holder and as to why he had not brought the fact to the notice of the Accountant though the cheque was of more than Rs. 5000. Therefore it is concluded in the order it is not relevant for the purpose of considering the points of perversity of findings or the alleged victimisation of the worker or about the magnitude of punishment.

26. Further the record discloses that the first party examined a witness as WW-2 on 4-8-87 in part. Later in the order sheet dated 15-9-92 that witness reported to be dead. Therefore it is presumed that the evidence of WW-2 was totally discarded. The portion of evidence of this witness is not available. Therefore the further evidence of first party and the evidence of WW-3 and the management witness MW-2 is relevant to examine on the point of victimisation and unfair labour practice.

27. In the further evidence of the first party, in examination-in-chief he states that he was a Branch Secretary of the Canara Bank Employees Union affiliated to AIBEA. He further says that he was active member. It is his further evidence, immediately after the incident no charge sheet was issued to Lalitha Kumari who was the concerned counter clerk in that branch. Charge sheet was issued against Shri E. T. Bhaskaran who is no more. He was not given any punishment when he was alive.

28. In the cross-examination he has admitted that he has not produced any documents to show that he was branch secretary of the union at Pattanayakanahalli. It is further elicited that he has not written any letter to the bank that he has become a member of the union. He has admitted that he was not a secretary in the union and he has denied the suggestion adverse to his activity. He has also expressed his ignorance of any enquiry conducted against Shri Bhaskaran.

29. MW-2 S. Balasubramanya who gave the evidence on 18-6-87 states that he was working in the Disciplinary Department and he has gone through the file of the first party. From the date he came to the Town Hall branch he did not give any letter or representation that he was a member or active member of the union. He has denied that the proceedings are initiated only because of his union activities. He has also stated that the first party entered into the service code of the bank when he had entered into the service of the bank. It is further stated a charge sheet was issued to the late Bhaskaran as per the xerox copy and the proceedings. Ex. M-6 is the proceedings of the General Manager of the bank showing the proceedings against Bhaskaran has been dropped. At that time Lalitha Kumari was working as a professional clerk. Investigation was made and it was found that there was no case against her and no proceedings were initiated against her. Exs. M-7 and M-8 are the charge sheet issued to the Bhaskaran and the service agreement executed by the first party respectively.

30. In the cross-examination it is elicited that the enquiry had been completed against Bhaskaran, before punishment was initiated he died. There is a separate file of Bhaskaran. The same is available. He has also showed his ignorance of union status of the first party. He has also denied the suggestion that by way of victimisation the first party has been dismissed. He has further made to say that the service code is applied to the first party also.

31. The third witness Subhas A. Shanbhag examined on behalf of the first party deposed that he is the branch secretary of the C.B.E.U. The first party was very active member of the union and he was branch secretary of the union when he was working at Pattanayakanahalli branch.

32. In the cross-examination it is elicited that there are totally four unions in the Canara Bank and he was not an office bearer of the union at any point of time. The Branch Secretary will be elected by the members and he was not produced any documents to show that he was a branch secretary. He has admitted that at some times it may be necessary for the bank to consult the union before issuing the charge sheet or suspending an employee. He is not remember whether the bank consulted the union in respect of the first party. He is aware of the charge against the first party and the allegations. He has no documents to show that the first party is an active member nor any representation to show that he has represented to the management about his union activities. He further says that disciplinary authority or enquiry officer has no ill-will against the first party workman.

33. The evidence elicited above does not lead us to draw any conclusion that the punishment imposed against the first party amounts to victimisation and unfair labour practice due to his union activities. The charge made against late Bhaskaran is not comparable.

34. The first party failed to prove all the averments made by him in support of his contentions. The conclusion reached by the enquiry officer does not call for any modification as the allegation made by the first party was not proved.

35. Now coming to the application of the benevolent provision of Section 11A of the Act the punishment of discharge to the proved misconduct does not shock the conscience of the court. In fact the disciplinary authority condoned the misconduct and discharged the first party which provided an opportunity for any other employment as no stigma is attached. The first party is discharged during 1981 for the offence committed during 1974. It is true that the enquiry was initiated 2 years after the incident but that can not be a ground to set aside the enquiry itself. Due to various reasons the enquiry will be delayed as necessary materials has to be gathered before accusing a person.

36. Since the first party failed to prove the allegation of victimisation and unfair labour practice one can not view the initiation of enquiry was mala fide. Having regard to these facts and circumstances the following order is made.

ORDER

37. The Management of Canara Bank was justified in discharging Sri B. Viswanatha Rao, Clerk, Town Hall Branch, w.e.f. 11-4-1981. The reference is answered accordingly.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 27th January, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.मा. 742.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एल-12012/65/96-आई.आर. (बी-II)]
सी. गंगाधरन डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 742.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 17-02-99.

[No. L-12012/65/96-IR(B-II)]
C. GANGADHARAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 16 of 1997

PARTIES:

Employers in relation to the management of Bank of India.

AND

Their workmen.

PRESENT:

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCES:

On behalf of Management : Mr. S. Kumar, Deputy Chief Officer (Industrial Relations) of the Bank.

On behalf of Workmen : Mr. R. Chattopadhyay, Member Law Sub-Committee of Bank Employees' Federation (W.B.).

STATE : West Bengal.

INDUSTRY : Banking.

AWARD

By Order No. L-12012/65/96-IR(B-II) dated 8-5-1997/9-5-1997 the Central Government in exercise of its powers under Sections 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Bank of India, Eastern Zone, Calcutta in not considering Shri D. N. Sil for the post of Head-Peon is legal and justified? If not, to what relief the said workman is entitled?"

2. Instant reference has sponsored by the Bank of India Employees Union (in short the union) in respect of one D. N. Sil. Union's case in this matter is that the concerned workman was appointed in the subordinate staff cadre as a Sipoy and at the relevant time, i.e., on 13/21-8-1993 he was selected for working in the post of Daftary at the Nabapally Branch of the Bank of India (in short the Bank) and he is still working there in the said capacity. The main grievance of the union in this matter is that the management of the Bank issued a circular dated 1-12-1993 inviting applications for filling up vacancies attracting special allowance posts in the subordinate and clerical cadre in both C.C.A. and non-C.C.A. area. In terms of the said circular the concerned workman submitted his application on 8-12-1993 for his selection to the post of Head-Peon to the Zonal Manager, Eastern Zone, Personnel Department through the Chief Manager of the Nabapally Branch, long before the last date for filing such application before him as per that circular and notice which was subsequently issued for that purpose. In addition to the said application the concerned workman also sent the application directly to the Zonal Manager under certificate of posting on 9-12-1993. The case of the workman, however, was not considered by the management of the Bank on the plea that no such application, either directly from the concerned workman or through the concerned branch, was received by them. The management accordingly upon consideration of the applications filed before it selected one Bholanath Karmakar as Head-Peon and posted him at Nabapally Branch. After appointment of the said Shri Karmakar the concerned workman protested before the management against such appointment. That application was rejected on the ground that the matter cannot be reopened. The concerned workman then referred the matter to his union, which raised an industrial dispute in the matter. No solution of the problem being available to the Conciliation Officer, he referred the matter to the Central Government which made this reference and sent the same to this Tribunal for adjudication. The union accordingly prayed that the concerned workman be appointed as Head-Peon of Nabapally Branch of the Bank with effect from December, 1994 considering seniority of his service, with all consequential reliefs.

3. The management of the Bank filed the written statement, alleging, inter-alia that selection to the special allowance carrying posts including that of the Head-Peon is done on the basis of seniority and willingness on the part of the concerned subordinate staff by his making of proper application on that behalf. Bank's positive case in this matter is that the notice was issued by the Zonal Manager, Eastern Zone of the Bank inviting applications from the eligible members of the staff who were willing to work as Head-Peon. It was clearly mentioned in the said notice that the applicants should submit their applications to the Zonal Manager through respective Branch Managers and they were also to forward an advance copy of the application to the Zonal Office. That was done by the Bank with a view that nobody was denied the opportunity to make application. The Bank has alleged that due care was taken to protect the interest of every individual. The Bank further alleged that the persorted application of the concerned workman was never received by the Zonal Office directly. The Bank has also denied the service of the application under certificate of posting upon the Zonal Manager directly. The Bank has further alleged that it issued appointment letter for the post of Head-peon by its letter dated 27th July, 1994. The Bank has further allotted that since Bholanath Karmakar was the senior most amongst the applicants he was selected for the said post and was given the consequential appointment. It is further stated that selection and appointment of Bholanath Karmakar was a fait accompli and there is no scope for reopening the issue by consideration of the case of the concerned workman. The Bank has further submitted that it might lead to serious industrial disputes if the selection is set at naught by the Tribunal for no fault of his own. The Bank accordingly prayed for dismissal of the union's case.

4. The union has submitted a rejoinder reiterating the allegations made by it in its written statement

5. Heard Mr. R. Chattopadhyay, representative of the union and Mr. S. Kumar, representative of the management.

6. The parties have examined one witness each and the union has filed as many as six documents in support of its case.

7. There is no dispute in this case that the concerned workman D. N. Sil was the seniormost amongst the subordinate staffs and no objection was taken by the management in its written statement about the filing of his application for selection to the post of Head-peon before the Branch Manager of Nabapally Branch of the Bank. The management has taken the plea that it was not incumbent upon the concerned workman to file application not only before his Branch Manager but also to forward an advance copy of the same to the Zonal Manager. The witness examined on behalf of the Bank also led evidence to that effect. Mr. Kumar drew my attention to paragraph 3 of the notice marked Ext. W-2. This paragraph runs as follows: "Applications received in the past will not be considered and fresh applications are to be submitted in terms of this notice. Last date for submission of applications at the branch is 24th December, 1993. Applications submitted after the last date will not be accepted. Applicant should forward a copy of the application to Zonal Office directly, so that the same reaches us by 29th December, 1993. Applications received at Zonal Office after 29th December, 1993 will not be considered." Mr. Chattopadhyay submitted that the concerned workman did everything in compliance to the said notice. He pointed out the application of the workman dated 8-12-1993 which he made before the Zonal Manager through the Chief Manager, Nabapally Branch and he further showed the receipt of the certificate of posting from which it will appear that the concerned workman despatched the application on 9-12-1993. Under Section 114 of the Indian Evidence Act there is a presumption that the letter despatched in proper address has reached there in due time. The union having succeeded in proving the despatching of the application, it is for the management to rebut that presumption under law that it has not reached the addressee in due time. There is no evidence in this case for rebuttal of the presumption. Even apart from that, the only purpose for which the advance copy of the application was to be sent directly to the Zonal Manager was to ensure that the Zonal Office shall receive all the applications well before the selection process starts. In the instant case, it appears that the concerned workman actually applied before the Chief Manager of his branch on 8-12-1993. I have already stated that there is no such denial in the written statement of the management from which it can be inferred that this application was never received by the Zonal Office. Even if the Zonal Office did not receive it in spite of filing it on 9-12-1993 by the concerned workman, he cannot be blamed for the same. It appears from the evidence of the management's witness that a cut-out slip system was invented by the Bank to prevent the lapse of the branches to sent the applications in due time. It appears from the evidence of MW-1 that even in spite of existence of such system, the Zonal Office did not think it necessary to verify whether they had received any cut-out slip from the Nabapally Branch. The fault therefore entirely lie upon the management, if they had not received any such application. I have already stated about the presumption of receipt of such advance copy of the application by the Zonal Office as the legal presumption has not been rebutted.

8. I have already stated that there is no dispute that the concerned workman was the seniormost amongst the candidates for selection to the post of Head-peon. I have also shown that the concerned workman duly forwarded his application to the Branch Manager and to the Zonal Office in due time. If these applications were not taken into consideration by the Bank management without any reason whatsoever, the illegality committed by them in selecting Bholanath Karmakar for the said post, ignoring the comparative seniority of the concerned workman is apparent. The Bank itself is to bear responsibility for such illegal appointment in favour of some one to whom it was not due. The seniority being admittedly the criterion for such appointment, the Bank has no case for its refusal to appoint the concerned workman to the post of Head-Peon even though he applied before the management for his appointment to the said post after the

appointment is made in favour of Shri Karmakar since he did not know anything about the fate of his application before.

9. It was submitted on behalf of the Bank that if at this stage the selection of Shri Karmakar who was selected duly is set at naught, there will be industrial unrest. It need not be presumed, as stated by Mr. Kumar that there may be industrial unrest if the illegal appointment of Shri Karmakar is not upheld. On the other hand, there may be industrial unrest if the proper person who is entitled to get such appointment is denied of the opportunity to get the said post.

10. Mr. Chattopadhyay drew my attention to the case of State of M.P. v. Dharam Bir, reported in 1998 SCC (L&S) 1459 in support of his contention that the status of an appointee does not change merely by afflux of long time which was 10 years in that case. He also drew my attention to the case of Kishorilal Charamkar v. Dist. Education Officer, reported in 1998 SCC (L&S) 1191 where it was held that appointment made no mistake of fact do not confer any right on the appointees. In the case of Ajit Pargaokan v. State of Maharashtra, reported in AIR 1995 SC 962 it was held that "Eligibility and continues work for howsoever long period would not be permitted to over reach the law. Requirements of rules of selection through Public Service Commission cannot be substituted by human consideration. Law must take its course". In the above view of the matter, appointment of Shri Bholanath Karmakar to the post of Head-peon should not have been made ignoring the rightful claim of the concerned workman in the matter.

11. The management of Bank of India, therefore, has acted unjustifiably and illegally in appointment to the post of Head-peon. The management of the Bank is accordingly directed to assign the post of Head-Peon to Shri D. N. Sil from the date it was legally due to him and to pay him all consequential reliefs.

This is my Award.

Dated, Calcutta,

The 4th February, 1999.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 743.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ बड़ोदा के प्रबंधन के संबंधित नियोजको और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कसकता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एन 12011/10/96-आई.आर. (बी-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 743.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workman, which was received by the Central Government on 17-02-99.

[No. L-12011/10/96-IR(B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT CALCUTTA

Reference No. 14 of 1997

PARTIES :

Employers in relation to the management of
Bank of Baroda.

AND

Their workmen.

PRESENT :

Mr. Justice A.K. Chakravarty—Presiding Officer.

APPEARANCE :

On behalf of Management :

Mr. A.K. Samaiyar, Senior Manager (Personnel)
of the Bank.

On behalf of Workmen :

Mr. R. Chattopadhyay, Vice President of the
Union.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

By Order No. L-12011/10/96 IR(B-II) dated 31-4-1997 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Bank of Baroda in imposing punishment of stoppages of one increment with cumulative effect on Sh. Bablu Chatterjee and Sambhu Nath Chatterjee while exonerating Shri Somnath Chowdhury from the identical charges is justified? If not, to what relief the workman is entitled?”

2. The Bank of Baroda Employees Association (in short the union) has sponsored this case for two of its members, namely, Bablu Chatterjee and Sambhu Nath Banerjee who were employed as subordinate staffs of the Bank of Baroda (in short the Bank).

3. Union's case, in short, is that Somnath Chowdhury, Bablu Chatterjee and Sambhunath Banerjee were at all material times subordinate staffs of the Bank. They all appeared in the written English test for promotion to clerical cadre on 17-5-1992. On or about 14th December, 1992 all these three workmen were chargesheeted by the competent authority under two heads, namely, that they did acts prejudicial to the interest of the Bank and that they also did acts unbecoming of bank employees. The reason for the issue of such chargesheets were that they resorted to unfair practices by copying either from a common source or from each other as similarity of mistakes, as described in the chargesheets, were observed in the answer sheets of these workmen. Shri Tuhin Chowdhury, an officer of the Bank was appointed as the Enquiry Officer. He conducted enquiries against all the three chargesheeted employees in conformity with the principles of natural justice and thereafter

submitted a common report covering all the three employees. In his report the Enquiry Officer exonerated Somnath Chowdhury of the charges which was accepted by the competent authority. He, however, held the concerned workmen, namely, Bablu Chatterjee and Sambhu Nath Banerjee guilty of the charges levelled against them and the disciplinary authority on the basis of such report directed deduction of one increment by way of punishment. The union has assailed the finding of the Enquiry Officer as perverse, being based on no evidence and based on impermissible suspicion, surmises and conjectures. It is alleged that there was no evidence before the Enquiry Officer of the concerned workman copying each other's answer scripts and that they were caught red-handed in the examination hall for adopting such unfair means. The union thereafter found out number of spelling mistakes committed by the concerned workmen and alleged that with such abysmally poor knowledge of English of both the workmen, there might be few identical mistakes by sheer coincidence. The union has further alleged that the chargesheet itself is defective because the charges against the concerned workmen have not been specifically alleged therein. The union accordingly prayed for exoneration of the concerned workmen from the charges levelled against them by quashing the orders passed by the disciplinary authority in the matter.

4. The management of the Bank has filed a written statement challenging the maintainability of the reference on the ground that the dispute under the reference being purely monetary in nature, it is to be disposed of by a Labour Court and not the Industrial Tribunal. It is also alleged that the Enquiry proceeding having not been challenged on the ground of non-observance of the principles of natural justice, the union cannot challenge the findings of the Enquiry Officer only on the ground of perverseness. It is also alleged that the Enquiry Officer has drawn the conclusion correctly. The disciplinary authority having given an opportunity to the concerned workmen to show cause about the proposed penalty, such order of the disciplinary authority imposing punishment of stoppage of one increment with cumulative effect cannot be challenged. It is also alleged that the appellate authority after careful consideration of the facts and circumstances of the case confirmed the order of the disciplinary authority. The management accordingly prayed for dismissal of the union's case.

5. In its rejoinder, the union has denied that there is any scope for making any money claim and alleged that the union can always challenge the disciplinary proceeding and the order of punishment imposed upon the concerned workmen. The rest of the allegations are merely repetition of the union's allegations in its written statement.

6. Heard representatives of both sides.

7. Both parties have produced certain documents in support of their respective cases, apart from examining both the concerned workmen by the union and also two witnesses by the management.

8. About the facts of the case there is no dispute. The union has produced three chargesheets issued

against Somnath Chowdhury, Bablu Chatterjee and Sambhu Nath Banerjee and they have been marked Exts. W-1, W-2 and W-3 respectively. The minutes of the enquiry proceedings conducted by the Enquiry Officer in respect of each of them have been marked Exts. W-4, W-5 and W-6. The printed English question paper set is marked Ext. W-7. The answer scripts of these three workmen have also been produced and they have been marked Exts. W-8, W-9 and W-10. The report of the Enquiry Officer is marked Ext. W-12 in this case. It appears from these enquiry proceedings that the Enquiry Officer examined witnesses of the management and the concerned workmen participated in those proceedings by cross-examining the witnesses of the management and also by examining their own witnesses. As a matter of fact, in their evidence before this Tribunal both the concerned workmen, namely, Bablu Chatterjee and Sambhu Nath Banerjee admitted that principles of natural justice were duly followed in holding the enquiry. The management's two witnesses which includes the Enquiry Officer also stated that there was no departure from the principles of natural justice in this case.

9. What, however, was disputed very seriously was that the finding of the Enquiry Officer is perverse as there is absolutely no evidence to prove that any copying was made by the two concerned workmen. In this matter the Enquiry Officer found that there was possibility of copying from a common source of from each other. It is better to quote the finding of the Enquiry Officer in this matter in so far as the first possibility is concerned. He wrote "As far as the first possibility is concerned, the P.O. has not been able to identify and produce the alleged Common Source. The examinees were not caught red handed in the Hall. The P.O. Did not produce evidence of the officials who were actually present in the Hall on that day". According he noted "As such, copying from common source remains a distinct possibility and to prove/disprove the same, we have got only one tool : that is logical analysis". He, however, stated that "A candidate analysis". He, however, in English is not expected to memorise such an essay (in anticipation to be set in question paper) word to word, with common punctuation and un-usually common mistakes at similar place. Also the memory of two individuals is not expected to fail at the same time on the same point on repeated occasions. As such, the idea of memory failure to justify unusual similarity in answer scripts is not acceptable to me."

The Enquiry Officer accordingly drew his conclusion. Upon such findings he stated that "Thus, my conclusions are that there were cases of copying. BC had resorted to unfair practice by copying either from SC or from SB or from both or from a common source in the form of 'note' supplied in the Examination Hall. SB has also copied either from SC or from a common source as above."

10. I have quoted extensively the relevant portion of the findings of the Enquiry Officer only for the purpose of showing that there is no direct evidence in support of the alleged copying by the concerned workmen. The Enquiry Officer himself has stated that his finding is based on logical analysis. Before

proceeding to discuss how far the Enquiry Officer was justified either in facts or in law to make such logical analysis, it is to be noted that the onus was entirely upon the management to prove copying. There was no evidence before the Enquiry Officer that the candidates for the test were sitting in the examination hall without any invigilator to guard against commission of any malpractice by them. As matter of fact, there was evidence that some persons were present when the examination was conducted. Since they were not found to be copying by any one at the examination hall, they cannot be held to be copying the answer scripts of each other. The reason which prompted the Enquiry Officer to come to the conclusion that the concerned workman were guilty of copying the answer scripts are that similar mistakes had occurred in several places in the answer scripts and word by word identity of narration of the matter. The Enquiry Officer has ruled out any possibility of the two concerned workmen memorising that matter from the same common source. It may be difficult to imagine a coincidence like that but the possibility cannot be ruled out. The law regarding circumstantial evidence requires the circumstances to be such that they lead to the only hypothesis of guilt of the concerned person to the exclusion of all other possibility. Accordingly the Enquiry Officer was not justified in coming to that finding of guilt of copying by the concerned workmen.

11. It is also necessary to consider the legal position in the matter. In the case of Union of India v. H. C. Goel, reported in 4 SCLJ 617 (SC) it was held that "Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out said purpose, mere suspicion should not be allowed to take place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to the disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to the regular criminal trials as to disciplinary enquiries held under the statutory rules." Reference can also be made to the case of Ajay Hasia v. Khalid Mujib Sehravardi, reported in 1981(1) LLJ 103 where it was held that "The chart does create a strong suspicion in our minds that the marks awarded in the viva voce examination might have been manipulated with a view to favouring the candidates who ultimately came to be selected, but suspicion cannot take the place of proof and we cannot hold the plea of mala fide to be established". In the case of A. V. Krishnamurthy v. Govt. of Tamil Nadu & Ors., reported in 1985(I) LLJ 46 it was held that "It is true that the enquiry held by the departmental tribunal is not governed by the strict and technical rules of evidence. But, if the departmental tribunal has rendered a finding based on acceptable evidence, that could be regarded as error of law to be corrected by a writ of certiorary. Suspicion, assumption and presumption cannot take the place of proof by means of acceptable evidence in the disciplinary proceeding before a departmental tribunal." There being no acceptable evidence in this

matter, I am to hold that the finding of guilt of the concerned workmen is perverse and the enquiry proceeding is accordingly liable to be set aside for that reason.

12. It was further submitted on behalf of the union with reference to the chargesheets that the charges levelled against the concerned workmen are vague and indefinite and the concerned workmen are not liable to be held guilty on such charges. There are as many as two charges levelled against the workman, namely, that they did acts prejudicial to the interest of the Bank and also did acts unbecoming of bank employee. In so far as the allegation of doing of acts prejudicial to the interest of the Bank, there is no clarification about the exact nature of the work performed by the concerned workman. Such vague allegations in respect of commission of offence shall be of no avail. In so far as the second charge that commission of acts unbecoming of a bank employee there is nothing in the bipartite settlements, which includes alleged copying within the expression gross misconduct. Regarding such framing of charge it is laid down in the case of *A. L. Kaira v. Projects & Equipments Corp.*, reported in 1984 (II) LLJ 186 that "where misconduct when proved entails penal consequence, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct." In the case of *Glaxo Laboratories v. Labour Court, Meerut*, reported in 1984(I) LLJ 16 it was held "..... Everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of the management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none-the-less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty."

13. I have already stated that copying in the departmental examination is not enumerated as a misconduct in the bipartite settlement. The charges against the concerned workmen being not specific as amounting to misconduct, both the enquiry proceedings as well as the punishment inflicted upon them on that basis was illegal and improper.

14. Nothing being urged by either of the parties in respect of exoneration of Somnath Chowdhury in the departmental enquiry, no finding in respect of that matter is called for in this reference.

15. The enquiry proceedings themselves thus suffering from infirmity, as stated above by me not only for the perversity of the findings of the Enquiry Officer but also for the charges being bad for vagueness that the same is not acceptable and is liable to be quashed.

16. So, upon consideration of the facts and circumstances of the case as well as position of law in the matter, I am to hold that the management of Bank of Baroda was not justified in imposing the punishment of stoppage of one increment with cumulative effect upon the concerned workmen Bablu Chatterjee and Sambhu Nath Banerjee. The orders passed by the management to that effect are all set aside. Increments of the concerned workmen be restored accordingly.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

The 4th February, 1999.

नई दिल्ली, 18 फरवरी, 1999

का.आ. 744.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में; केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधकों के संबंध में निवृत्तियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकटित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[चं. एन-12011/60/91-आई.आर. (बी-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 744.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 17-02-99.

[No. L-12011/60/91-IR (B-II)]

C. GONGADHARAN, Desk Officer

अनुबंध

केन्द्रीय औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर
म. प्र.

डी. एन. दीक्षित,

पीठाधीन अधिकारी

प्र. क्र.—पीजीआईटी/एनसीआर/51/92

उप महासचिव,

यूनिथन आफ़ दी महाराष्ट्र बैंक एम्प्लॉईज,
जबलपुर शाखा, दीवान भवन, श्रीराम नगर,
गुलौवा चौक, गढ़ा, जबलपुर (म. प्र.)

—प्रार्थी

विरुद्ध

सहायक महाप्रबंधक (औद्योगिक संबंध),
बैंक आफ़ महाराष्ट्र, केन्द्रीय कार्यालय,
1501, "लोकमंगल" शिवाजी नगर,
पण-5

—प्रति

अवधि

दिनांकित : 13-1-1999

1. भारत सरकार, श्रम मंत्रालय, नई दिल्ली ने अपने आदेश संख्या एन-12011/60/91-आई.आर. (बी-2) दिनांक 12-3-92 के द्वारा निम्नलिखित विवाद निराकरण हेतु इस अधिकरण को भेजा है :—

अनुसूची

"Whether the demand of the Union of the Maharashtra Bank Employees from the management of Bank of Maharashtra—

- (1) to transfer the employees from Coal Belt areas Branches, immediately after completion of certain specific period as per their request;
- (2) to provide "water filter" to the employees working in Coal Belt area Branches is justified? If so, to what relief the workmen are entitled to?"

2. यूनियन के अनुसार महाराष्ट्र बैंक के प्रबंधन का यह फर्ज है कि अपने कर्मचारियों की जीवन रक्षा के लिए और उनके स्वास्थ्य की देखभाल के लिए सभी कदम उठाये जाएं। छिंदवाड़ा जिला मध्य प्रदेश में महाराष्ट्र बैंक की 12 शाखाएँ हैं। इस पूरे जिले में कोयले की खदानों के कारण प्रदूषण और जल एवं वायु में मिश्रण है। इसके कारण इस जिले में निवास करने वाले लोग गंभीर बीमारियों से पीड़ित रहते हैं। इस संबंध में समाचार-पत्रों में लगातार खबरें छपती रहती हैं। यूनियन ने इस संबंध में जांच पड़ताल की और उन्हें यह पता लगा कि जल और वायु के प्रदूषण से छिंदवाड़ा जिले की पूरी आबादी गंभीर बीमारियों से पीड़ित है। इस जिले में महाराष्ट्र बैंक के जो कर्मचारी कार्यरत हैं, वे भी बीमारियों से पीड़ित हैं। इनमें से बहुत से कर्मचारी पिछले 8-10 वर्षों से इस जिले में कार्यरत हैं। बहुत से कर्मचारियों ने स्वास्थ्य को आधार बनाकर छिंदवाड़ा जिला से बाहर पोस्टिंग के आवेदन दे रखे हैं। सामान्य रूप से कर्मचारियों के ट्रांसफर आवेदन पर प्रबंधन ध्यान नहीं देता। इसी जिले में दूसरे संस्थान भारतीय स्टेट बैंक अपने कर्मचारियों को वाटर फिल्टर दे रहे हैं। यह सुविधा भी महाराष्ट्र बैंक इस जिले में कार्यरत अपने कर्मचारियों को नहीं देता। यूनियन चाहती है कि जिला छिंदवाड़ा में कार्यरत महाराष्ट्र बैंक के कर्मचारी एक वर्ष कार्य करने के पश्चात् दूसरे जिले में भेजे जाएं। यूनियन के अनुसार दूसरे जिले में ट्रांसफर की जो पालिसी है, उसका लाभ जिला छिंदवाड़ा के कर्मचारियों को नहीं मिल सकता, क्योंकि छिंदवाड़ा जिला में प्रदूषण के कारण स्वास्थ्य को अत्यधिक खतरा है। इस जिले से जिन कर्मचारियों का स्वास्थ्य के आधार पर स्थानांतरण हुआ है, वह भी आवेदन देने के 8-10 साल बाद हुआ है। ऐसी स्थिति में इस ट्रांसफर का लाभ कर्मचारियों या उनके परिवार को नहीं मिल पाता। यूनियन चाहती है कि इस जिले में नये कर्मचारियों को नियुक्त किया जाए। यूनियन के अनुसार छिंदवाड़ा जिले में प्रत्येक

कर्मचारियों में केवल एक साल तक कार्य लिया जाए और इसके बाद उसका स्थानांतरण अन्य जिले में किया जाए। यूनियन की दूसरी मांग है इस जिले में कार्यरत महाराष्ट्र बैंक के प्रत्येक कर्मचारियों को वाटर-फिल्टर प्रबंधन की ओर से दिये जाएं।

3. प्रबंधन के अनुसार कर्मचारियों की सुविधा के लिए द्विपक्षीय समझौते के आधार पर दिनांक 31-10-83 को ट्रांसफर स्कीम बनाई गई है। इस स्कीम के अन्तर्गत स्वास्थ्य के आधार पर कर्मचारी अपना ट्रांसफर मांग सकते हैं। अगर छिंदवाड़ा जिले में कोई कर्मचारी बीमार है और अपना ट्रांसफर चाहता है तो इस स्कीम के अन्तर्गत प्रत्येक कर्मचारी के प्रकरण में विचार होता है और ट्रांसफर की सुविधा दी जाती है। छिंदवाड़ा जिले के लिए अलग से कोई ट्रांसफर पालिसी बनाना संभव नहीं है। बैंक ने स्वास्थ्य के आधार पर अपने कर्मचारियों का ट्रांसफर जिला छिंदवाड़ा के बाहर भूतकाल में किया है और भविष्य में भी प्रत्येक प्रकरण का गुणदोष पर परीक्षण होगा और अगर यह पाया गया कि कर्मचारियों का स्वास्थ्य छिंदवाड़ा जिले में ठीक नहीं रहता तो उसका स्थानांतरण दूसरे जिले में किया जाएगा। प्रबंधन के अनुसार किसी भी कर्मचारी की मृत्यु प्रदूषण के कारण अभी तक छिंदवाड़ा जिले में नहीं हुई है। प्रबंधन के अनुसार कर्मचारियों को घरेलू उपयोग की चीजों को खरीदने के लिए बैंक द्वारा कर्ज दिया जाता है। अगर बैंक कर्मचारी वाटर-फिल्टर को आवश्यक समझते हैं तो बैंक ने कर्ज लेकर खरीद सकते हैं। यह संभव नहीं है कि बैंक छिंदवाड़ा जिले के कर्मचारियों को वाटर-फिल्टर दे। प्रबंधन के अनुसार यूनियन ने अपनी प्रभुता दिखाने के लिए वर्तमान विवाद उत्पन्न किया। प्रबंधन चाहता है कि अपना उसके पक्ष में दिया जाए।

4. प्रबंधन की ओर से श्री जयिज कुमार मेनकर, फिस्ट्रिकट को-ऑर्डिनेटर का गणपथ-पत्र प्रस्तुत किया गया। जिसमें बताया गया कि छिंदवाड़ा जिले में कुल 103 बैंक हैं। अगर वास्तव में छिंदवाड़ा जिले में कोयले की खदानों के कारण प्रदूषण होता तो इन सभी बैंकों के कर्मचारी स्वास्थ्य के आधार पर ट्रांसफर की मांग करते। यूनियन ने यह नहीं बताया कि दूसरे बैंक के कर्मचारी प्रदूषण के कारण ट्रांसफर की मांग कर रहे हैं।

5. मध्य प्रदेश में सीधी, सरगुजा, बिलासपुर, गढ़डोल और बैतूल जिले ऐसे हैं, जिनमें जिला छिंदवाड़ा के समान और उनकी ही संख्या में कोयले की खदानें हैं। यूनियन का नर्क अगर मान लिया जाए कि कोयला खदानों से प्रदूषण होता है तो इन जिलों में जो बाहर के कर्मचारी प्रांतीय सरकार और केन्द्रीय सरकार के कार्यालयों में कार्यरत हैं, उनका सभी का ट्रांसफर एक वर्ष में करता होगा। इसके अतिरिक्त इन जिलों के जो मूल निवासी हैं, उनके संबंध में भी गंभीरता से उनके स्वास्थ्य के संबंध में विचार करना होगा।

आभी तक इन जिलों के लिए कोई विशेष सुविधा प्रांतीय शासन और केन्द्रीय शासन ने नहीं प्रदान की है। इस संबंध में विशेष सुविधा की कोई मांग है, ऐसा भी ध्यान में नहीं आया है। अगर प्रांतीय शासन और केन्द्रीय शासन के कर्मचारी जिला छिंदवाड़ा में काम करते हैं, तो महाराष्ट्र बैंक के कर्मचारियों को काम करने में असुविधा नहीं होनी चाहिए। इस संबंध में कोई गंभीर राजनैतिक मांग भी नहीं उठाई गई है। अगर वास्तव में प्रदूषण के कारण छिंदवाड़ा जिले में स्वास्थ्य का गंभीर खतरा होता तो इस संबंध में मांग अवश्य राजनैतिक दल उठाते। जहां तक मध्य प्रदेश विधान सभा में स्थगन प्रस्ताव दिनांक 9-12-85 का सवाल है, यह ध्यान देने योग्य बात है कि यह प्रस्ताव सन् 85 का है। इस प्रस्ताव में क्या चर्चा हुई और शासन ने क्या आश्वासन दिया, यह उपलब्ध नहीं है। एक स्थगन प्रस्ताव का यह तात्पर्य नहीं होता कि प्रदूषण छिंदवाड़ा जिले में रहने वाले लोगों के स्वास्थ्य के लिए प्राणघातक है।

6. छिंदवाड़ा जिले में जो भी महाराष्ट्र बैंक के कर्मचारी कार्यरत हैं और जिन का स्वास्थ्य खराब है तथा जिसकी देखभाल इस जिले में नहीं हो सकती, वे स्कीम दिनांक 16-11-83 के अनुसार अपना स्थानान्तरण के लिए आवेदन दे सकते हैं। प्रबंधन ने पहले भी इस प्रकार के आवेदनों पर विचार किया है और कर्मचारियों का ट्रांसफर किया है। पीड़ित कर्मचारी इस स्कीम का फायदा ले सकते हैं।

7. यूनियन की ओर से माननीय मध्य प्रदेश उच्च न्यायालय के पीटिशन क्र. 3232/90 की फोटो प्रति पेश की गई है, जिसमें माननीय उच्च न्यायालय ने दो कर्मचारियों को ट्रांसफर आदेश की पीड़ा से सहायता दी है। छिंदवाड़ा जिले के जो भी कर्मचारी स्वास्थ्य के आधार पर ट्रांसफर चाहता है और प्रबंधन इन आवेदनों पर विचार नहीं करता तो वे न्यायालय से इस संबंध में सहायता पा सकते हैं।

8. यूनियन ने छिंदवाड़ा जिले के ऐसे किसी भी कर्मचारी के कथन इस न्यायालय में नहीं कराए, जो प्रदूषण के कारण पीड़ित हो और छिंदवाड़ा जिले के बाहर ट्रांसफर चाहता हो इस प्रकार छिंदवाड़ा जिले में प्रदूषण है, यह यूनियन की केवल श्रद्धा है। यह भी मिथ नहीं होता कि प्रदूषण के कारण प्राणघातक बीमारियां इस जिले में फैली हुई हैं। यह भी मिथ नहीं होता कि इस जिले में कार्यरत दूसरे जिलों के निवासी कर्मचारी अपने को प्रदूषण संबंधी बीमारी से भयभीत महसूस करते हैं।

9. यूनियन का सुझाव है कि जो नए कर्मचारी सर्विस मिलेकेशन बोर्ड के द्वारा रखे जाते हैं, उन्हें पहले पोस्टिंग छिंदवाड़ा जिले में की जाए और वहां कार्यरत जिले के सभी कर्मचारियों को जिले से बाहर ट्रांसफर किया जाए। जो नये कर्मचारी नौकरी में आते हैं उसे सामान्य रूप से दो साल तक परीक्षा अवधि में रखा जाता है और काम की ट्रेनिंग दी जाती है। इसके पश्चात् ही वह काम करने के लिए सक्षम होता है। अगर बिना ट्रेनिंग के महाराष्ट्र बैंक में छिंदवाड़ा जिले

में नये कर्मचारी रखे जायेंगे तो इससे ग्राम जनता को परेशानी होगी तथा बैंक को गंभीर नुकसान होगा। यह प्रस्ताव प्रायोगिक नहीं है।

10. ऊपर लिखी विवेचना का निष्कर्ष यह है कि यह आवश्यक नहीं है कि छिंदवाड़ा जिले के लिए अलग से बैंक ऑफ महाराष्ट्र के कर्मचारियों के लिए ट्रांसफर पालिसी बनाए।

11. यूनियन की दूसरी मांग है कि छिंदवाड़ा जिले में कार्यरत बैंक के सभी कर्मचारियों को फ्री वाटर-फिल्टर दिया जाए। आज बैंक का सामान्य कर्मचारी प्रतिमाह रुपये 5000/- वेतन पा रहा है। वाटर फिल्टर सामान्य रूप से बाजार में रुपये 500/- में उपलब्ध है। जो भी कर्मचारी फिल्टर खरीदना चाहते हैं, वे अपने वेतन की बचत से खरीद सकते हैं। बैंक ऑफ महाराष्ट्र में इसके लिए भी कर्मचारियों को कर्ज देने की व्यवस्था है। इसका फायदा भी बैंक के कर्मचारी ले सकते हैं। यूनियन प्रबंधन से फ्री वाटर-फिल्टर प्रत्येक कर्मचारी को पानी के लिए वैधानिक रूप से वाध्य नहीं कर सकती।

12. दोनों मांगों पर अवार्ड प्रबंधन के पक्ष में दिया जाता है। दोनों पक्ष इस प्रकरण का अपना-अपना व्यय वहन करें।

13. नियमानुसार अवार्ड की प्रतियां भारत सरकार, श्रम मंत्रालय, नई दिल्ली को प्रेषित की जाती है।

डी.एन.वीक्षित, पीठासीन अधिकारी

नई दिल्ली, 18 फरवरी, 1999

का.आ. 745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्विष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर में पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-02-99 को प्राप्त हुआ था।

[सं. एल-12012/425/91-आई.आर. (बी. II)]

सी. गंगाधरन, डस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 745.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 17-2-99.

INo. L-12012/425/91-JR(B-II)

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR
COURT; MADHYA PRADESH,
JABALPUR

Presiding Officer.—Shri D. N. Dixit.

Case No. CGIT/LC(R)/84/92

Bank of India,
Through its Deputy Zonal Manager,
Competent Authority, Zonal Office,
S. P. Patel Road, Post Box No. 4,
Nagpur.

.. Employer

Versus

Shri Surendra, S/o Samantha Gawai,
aged 42 years, Occ. Nil,
R/o Behind Kasturba Hospital,
Rameshnagar, Old City,
Akola (M.S.).

.. Employee

AWARD

Delivered on this 27th day of January, 1999

The Ministry of Labour, Government of India by
its order No. L-12012/425/91-IRE II dated 29-4-92
has referred the following dispute for adjudication :—

"Whether the action of the management of Bank
of India, Nagpur in terminating the services
of Shri Surendra w.e.f. 18-9-86 is justified?
If not, to what relief the workman is entitled?"

2. The contention of the workman Shri Surendra Gawai is that he was appointed as clerk in Bank of India from 8-1-73. He was promoted as Officer in the year 1980. On his own request, the workman was reverted back as a clerk and was posted in Akola branch. The workman developed mental problem and he was taking treatment for the same. He was treated at Akola, Nagpur and Bombay and was also given Ayurvedic treatment. Due to illness, the workman has remained absent. The workman has submitted medical certificates and applied from time to time for leave. In the year 1984, the management sent him for medical examination and this Doctor found him fit for work. The management terminated his services with effect from 18-9-86. At that time, the workman was admitted in hospital. The services of the workman were terminated without a departmental enquiry. He was not given retrenchment notice and retrenchment compensation. The workman claims that he be reinstated in service from 18-9-86 and be paid wages and allowances from that date.

3. The contention of the management is that the workman was mentally ill and due to illness was absent from duty from 28-11-81 to 14-2-85. The workman again remained absent from 17-6-85 to 25-8-85 and again from 29-12-85 till his services were terminated on 18-9-86. The workman thus was absent from duty from 1981 to 1986. Because of continuous absence of the workman on grounds of ill-health, he was removed from service according to Para-5(ii) of Shastri Award. The workman was given 3 months of salary in lieu of notice. The appeal

of the workman was considered and rejected vide order dated 4-11-86. The workman was ill and unfit to serve the Bank. On this account he has been removed from service. The action of the management is not punitive in nature. The termination of the workman is simpliciter. There was no need to hold a departmental enquiry against the workman as he himself has sent medical certificates about his illness. The period of absence is recorded in the branches of the Bank where the workman was posted. The workman was not retrenched hence there was no necessity to give him retrenchment notice and retrenchment compensation. Ample opportunity was given to the workman to improve his health and make him fit for the services of the Bank. The health of the workman did not improve hence his services has been dispensed with in public interest. The management prays that action of the Bank be confirmed and award be passed in favour of the management and against the workman.

4. The workman remained absent from duty from 18-11-81 to 11-2-85. He again remained absent from 17-6-85 to 25-8-85 and again from 29-12-85 to 18-9-86. The workman himself had sent medical certificates of different doctors and different hospital from which he has taken treatment during this period. It is not disputed that workman was suffering from depression and mental illness. For 5 years, the Bank has adjusted him by granting medical leave of absence for treatment. The workman according to his own version was in hospital when his services were terminated from 18-9-86. It is abundantly clear that from 28-11-81 to 18-9-86, either workman was on leave or he joined duty for short period and again proceeded for treatment. During all this period, he was suffering from mental illness thus the services of workman were not available to the bank from 28-11-81 to 18-9-86.

5. It is amply clear that the management was considerate about the illness of the workman and terminated his services from 18-9-86 when they found that the illness was persisting. Enough opportunity was given to workman to cure himself. The illness was not cured when his services were terminated from 18-9-86.

6. The services of workman were terminated by para-5(ii) of the Shastri Award on the grounds of continuous ill-health. This fact is mentioned in the termination order dated 18-9-86. In accordance with the Shastri Award, the workman was given 3 months pay in lieu of notice.

7. The termination of service of the workman is not retrenchment as defined in Section-2(oo) of the Industrial Dispute Act because his services were dispensed with on the ground of continuous ill-health.

8. There was no need to hold an enquiry before terminating the services of the workman because there was no dispute that the workman was ill with mental disease and further there was no dispute about the period of leave he has taken from the management. From the record kept with the management, it was amply clear that workman was mentally ill from 28-11-81 to 18-9-86. It was also clear that on 18-9-86, the workman was admitted in a

hospital for treatment of his disease and there were no indications of improvement. Thus the services of the workman were not available to the management from 28-11-81 to 18-9-86. There was no need to hold an enquiry to prove about his illness and duration of leave taken by the workman.

9. The action taken by the management is proper and valid. There is no illegality in the action. The order of the management dated 18-9-86 is hereby confirmed. The award is passed in favour of the management. Both the parties to bear their own cost.

10. Copies of the award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer,

नई दिल्ली, 18 फरवरी, 1999

का.आ. 746.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इंडियन बैंक के प्रबंधकों के संबंध में निम्नलिखित आदेशों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चैन्नई के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार का 17-02-99 का प्राप्त हुआ था।

[सं. एल-12012/238/93-आर्. (बी-II)]

श्री. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 746.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workman, which was received by the Central Government on 17-02-99.

[No. L-12012/238/93-IR(B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU CHENNAI-104

Thursday, the 22nd day of October, 1998

PRESENT:

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 166/1994

[In the matter of the dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the Workmen and the Management of Indian Bank, Madras.]

BETWEEN

The workman represented by
The Deputy General Secretary,
Indian Bank Employees Union,
25, Second Line Beach,
Madras-600 001.

AND

The General Manager,
Indian Bank,
Personnel Branch, Rajaji Salai,
Madras-600 001.

REFERENCE:

Order No. L-12012/238/93 IR(B-II), Ministry of Labour dated 14/26-7-94, Govt. of India, New Delhi.

This dispute coming on for final hearing on Thursday, the 17th day of September, 1998, upon perusing the reference, claim, counter statements and all other material papers on record, upon hearing the arguments of Tvl. Row & Reddy, S. Vaidyanathan, K. Indira, Advocates appearing for the petitioner-union, and of Tvl. Aiyar & Dolia, Advocates appearing for the respondent-management, this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue:

"Whether the action of the management of Indian Bank, Madras. in denying permanent appointment to Shri S. Nagarajan, Temporary Sweeper and dispensing with his services w.e.f. 8-7-91 is justified? If not, what relief is the said workman entitled to?"

2. The main averments found in the claim statement filed by the petitioner-union are as follows :—

The petitioner-union represents a substantial number of workmen of the respondent bank. The workman Nagarajan joined the bank on 9-1-84 as a sweeper on casual basis and continued as such till 31-3-89. The permanent incumbent Smt. Mariammal retired on 31-3-89 and Nagarajan was given a temporary status from 1-4-89 until he was illegally terminated on 8-7-91. On 3-1-90 the workman wrote to the bank requesting for permanency alongwith his school certificate in support of his qualification and experience. As the bank did not respond to Nagarajan's request for permanency, the Union moved the Conciliation Officer. The Bank stated that they were checking with the School regarding the genuineness of the certificate produced by the workman and the same would be decided once the investigation is over. Based on this, the conciliation proceedings were closed. On 8-7-91 the services of Nagarajan were terminated by the Bank on the ground that they were not satisfied with the information contained in the certificate produced by him. The Union once again moved the conciliation officer in regard to the arbitrary dismissal of Nagarajan on and from 8-7-91, without complying with the mandatory provision of Section 25F of the I.D. Act, 1947. Before the Conciliation officer, while the Bank had admitted that Nagarajan had worked for the required number of days for claiming permanency under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, they had raised the following among other grounds to justify their action, i.e. 1. Not sponsored by Employment Exchange & (2) Authorisation from Corporate Office not obtained.

Sponsorship by Employment Exchange is not necessary in respect of recruitment of Class IV employees as per decision of the Madras High Court reported in 1991 TLNJ Page 1. As regards authorisation of Corporate Office, the bank is estopped as per the decision of the Madras High Court in 1986 JNOJ 153, wherein it has been held that an employer appointing an employee and allowing him to continue in service years together, even though not sponsored by the Employment Exchange, cannot terminate the services of the employee on the sole ground that the employee was not sponsored by the Employment Exchange but action should be taken against the officer concerned who appointed the employee, at the same time reinstating the employee if his services were dispensed with already. The action of the bank is against the principles of natural justice. The Bipartite Settlement and the Sasrastris and Desai Awards, Educational qualification is not necessary for engagement as sub-staff in the bank as clarified in the circular 29-33 dt. 8-3-93. Nararajan has worked for 7 years under the respondent. He has an unblemished record of service, and the extreme punishment of dismissal from service is not only arbitrary but also against the principles of natural justice. The petitioner prays to interfere with the punishment under Sec. 11A of I.D. Act, Petitioner prays to pass an award holding that denial of permanent appointment to Thiru Nagarajan Temporary Sweeper w.e.f. 8-7-91 is not justified and consequently direct the bank to reinstate him in service as a Permanent full time employee with all consequential and attendant benefits.

3. The main averment found in the counter statement filed by the respondent are as follows:— Mr. S. Nagarajan could not be considered for permanent absorption because he was not sponsored through employment exchange. As per the policy prevailing in the respondent bank, list of candidates sponsored by the employment exchange subject to their satisfying the prescribed norms relating to age, educational qualification etc. is called for. An interview is conducted and the selected candidate is appointed as permanent sweeper. The recognised Federation of Indian Bank Employees Union to which the petitioner union is an affiliate has entered into a settlement with the respondent bank on 28-7-93 under Sec. 18(xi) of the I.D. Act, read with Sec. 2(p) of the said Act, among other provisions, agreeing for filling up of retirement vacancies by approaching the employment exchange. Therefore the claimant union cannot raise this dispute when the workman is a person who has not been sponsored by the employment exchange. On this ground alone, the reference deserves to be dismissed in limine. The bank, as a public sector undertaking is bound by the guidelines issued by the Govt. of India from time to time in the matter of recruiting a sweeper in subordinate staff cadre. The Ministry of Finance (Banking Division) has directed the respondent bank to ensure that recruitment in subordinate staff cadre irrespective of nature and duration of vacancy should be made only through employment exchange. This is again based on the communication of Ministry of Labour that while notification of vacancies to the Employment exchange in the subordinate cadre is obligatory on the part of the public sector undertaking under the Employment Exchange (Com-

pulsory Notification of Vacancies) Act, 1959, the executive instructions require that all vacancies arising in the Central Govt. Offices/establishments including statutory organisations irrespective of the nature and duration of the vacancy are not only to be notified but also to be filled through employment exchange alone. The post of part-time sweeper is classified under subordinate cadre in Banking industry. The respondent bank was and is under obligation to fill the vacancy of permanent part-time sweeper only through employment exchange. Whenever further vacancies arise in the higher pay scales of permanent part-time sweepers the same is filled up by upgrading the permanent part time sweepers drawing lower scale wages originally recruited and appointed through employment exchange. This is being done as per terms of the settlement dt. 28-7-93 referred to supra and a permanent part-time sweeper as per norms had joined duty at Madurai Main branch on 2-4-94. As far as Mr. Nagarajan is concerned, he was one of the casual sweepers occasionally engaged in the leave vacancies of permanent part time sweeper from 1984. Even after the retirement of permanent part time sweeper of Madurai Main branch on 31-3-89, he was intermittently engaged. He was and is not sponsored by employment exchange. On the basis of his casual engagement he submitted an application on 31-1-90 seeking appointment in the bank. He gave his date of birth on 17-10-1961. He produced a record sheet purported to have been issued by Sri Vivekananda Iyer, Thodakappalli, Pallivasal Street, Devakottai for the study undertaken by him from 12-5-1966 to 15-4-73. On verification, it was found that there was no such school from 1966 to 1973. This is evident from the letter of the Assistant Educational Officer, Devakottai dated 8-12-90 addressed to the District Educational Officer, Devakottai. It was also found that his date of birth could not be 17-10-61 because his daughter N. Nageshwari studied in Thirupuvanam Higher Secondary School from 6th std. to 10th std. and left the school on 20-6-90 and in the school records her date of birth is stated to be 30-6-1974. As per Electoral Roll 1988 (Assembly Election) kept at the Panchayat Union Office, Thirupuvanam, his age was 35 years in 1988. Based on the above bogus nature of claims made by Mr. Nagarajan by the letter dated 14-5-91 bearing TZO : VG : AS : 87 : 65 he was called upon to explain why his temporary services should not be dispensed with. He was given 10 days time to submit his explanation. He was again informed by Bank's letter dt. 27-6-91 that his reply should be submitted immediately. But, he did not submit any reply despite more than adequate time was given to him. Therefore, by order dated 8-7-91 bearing No. TZO : VG : AS : 87 : 163 he was disengaged. As a casual employee engaged for sweeping work at intermittent intervals, Mr. Nagarajan was and is outside the purview of the regular establishment of the bank and therefore Bipartite Settlement and Sastry Award are not applicable to him. This would be clear from the fact that Nagarajan had himself sought for an appointment in the bank by making an application for appointment. There is no scope for the claimant union to invoke Sec. 25(F) of the I.D. Act, when the reason for disengagement shows that he was not desirable to be continued as a casual

sweeper and he himself did not submit his explanation to specify and if necessary define it with precision the Tamil Nadu Act is not applicable to the respondent bank which is an establishment under Central Government and wholly owned by the Central Govt. It is a statutory body constituted under Central Act 5 of 1970. The respondent bank is bound by the directives of the Central Govt. and when the fact remains that Nagarajan was not sponsored by employment exchange, rightly the respondent bank did not consider him for permanent absorption. His intermittent and casual engagement was itself neither permitted nor later approved by the corporate office of the respondent bank. In the light of the Hon'ble Apex Court in 1992 LLJ 452 the claimant union cannot contend that there is no necessity for sponsorship through employment exchange in the case of Class IV employees. Sri Nagarajan was disengaged after his having been given an opportunity. He was not disengaged for the reason that he was not sponsored through employment exchange. He was not considered for absorption because he was not sponsored through employment exchange. He was disengaged from his casual engagement because he produced bogus certificates. Hence there is no violation of principles of natural justice, and his disengagement is legal and valid. Disengagement of the workman is not dismissal as erroneously alleged by claimant union. His disengagement is for valid and cogent reasons and is not arbitrary or violative of principles of natural justice. Respondent prays to dismiss the claim of the petitioner union.

4. On behalf of the petitioner union, Th. Herbert Tensingh, Deputy General Secretary of the petitioner-union was examined as WW1 and W-1 to W-8 have been marked. On behalf of the respondent Thiru Sankara Subramanian Senior Manager was examined as MW1. Ex. M1 to M.8 have been marked.

5. The point for consideration is : Whether the action of the respondent management in denying permanent appointment to Thiru S. Nagarajan, Temporary Sweeper and dispensing with his services from 8-7-91 is justified ? If not, what relief the said workman is entitled to ?

6. The Point : Thiru S. Nagarajan, was engaged as a temporary sweeper from 9-1-84 on a casual basis and continued as such till 31-3-89 when permanent incumbent Smt. Mariammal retired. On 3-1-90 the said Nagarajan has sent Ex. W-2 letter to the Zonal Manager of the respondent bank to appoint him on permanent basis in the vacancy caused by retirement of Smt. Mariammal. The petitioner-union has submitted a representation regarding the permanent appointment for S. Nagarajan, and the respondent management has sent Ex. W-3 letter furnishing respondent's comments on the representation submitted by the petitioner-union. Meanwhile certain letters dt. 21-10-90 sent by Islam Ilaingar Narpani Mandram, dt. 24-10-90 sent by one Gurusamy, were received by the respondent bank regarding submission of bogus certificate by the concerned employee and complaint about certain malpractices indulged by him. Based on these complaints, the respondent bank asked Thiru M. Sankara Subramaniam, Inspector of branches to investigate the complaints against Thiru Nagarajan

and the said Sankara Subramaniam submitted Ex. M.7 report dt. 5-10-90. After investigation the said Inspector has come to a conclusion that the employee Thiru Nagarajan has produced a bogus certificate in proof of his age and educational qualification. As per the school record of his daughter Nageshwari, she was born on 30-6-74. But the date of birth of employee Nagarajan as per the certificate produced by him is 17-10-61 and his daughter is said to be born in 1974 when he was only 13 years which is not practically possible. The District Educational Officer, Devakottai also sent a letter Ex. M.5 wherein he has mentioned that there is no school by name Vivekananda Middle School, in Pallivasal Street, Devakottai in the years from 1963 to 1973. The school certificate produced by the concerned employee at the time of joining service is Ex. M.4 wherein his date of birth is mentioned as 17-10-61 and certificate has been issued by Head Master of Sri Vivekananda Middle School, at Pallivasal Street, Devakottai. Such a school has been not in existence as per the report Ex. M.8 of District Educational Officer. The concerned employee's date of birth also should be false because there is a difference only 13 years between his age and age of his daughter which is also practically impossible. Therefore, on 14-5-91, the respondent management wrote Ex. M.5 letter to the employee asking for his explanation for submitting a bogus record sheet and also why his temporary services as a temporary sweeper should not be dispensed with. The said letter was handed over to concerned employee on 17-5-91. Once again by letter dt. 27-6-91 the concerned employee was reminded to submit his reply. Even after lapse of 50 days the concerned employee did not submit his explanation and therefore by an order dt. 9-7-91, Ex. W-4 the temporary services of the concerning employee was dispensed with. On 21-5-93, the petitioner union raised 2K dispute before the Regional Labour Commissioner (Central) and also sent another letter Ex. W-6 dated 16-8-93. The minutes of Conciliation proceedings held on 17-8-93 regarding this dispute is Ex. W-7. In the said conciliation proceedings the management has expressed its inability to make him permanent and take him back for the reasons (1) he was not sponsored by Employment Exchange, (2) the branch has engaged him without authorisation of the Corporate Office, and (3) however, without reference to the above objections when permanency was under consideration, complaints were received by the management about age, qualification and behaviour which on enquiry were found to be true. A photo copy of the school record sheet filed by the employee regarding his age and qualification and letter dated 8-12-90 from Asst. Educational Officer, Devakottai are produced. As regards the character of the employee also, photostat copies of the complaints received from Shri S. Ramanathan Pillai and Shri Guruswamy are produced. (4) Keeping the facts stated in Point No. 3, the explanation of the employee was called for on 14-5-91 and since no reply was received from him his services were disengaged with effect from 8-7-1991. Therefore the conciliation ended in failure and the conciliation failure report is Ex. W-8.

7. Even the General Secretary of the petitioner union who was examined as MW1 has categorically admitted that for appointment of post of part time

sweeper according to Ex. M.1 and M.2 and M.3, circulars, the sponsorship through Employment Exchange is absolutely necessary and the concerned employee Thiru Nagarajan was never sponsored by the employment Exchange and he could not even deny that the said Nagarajan, has not registered his name in the Employment exchange and also that the school certificate to Ex. M.4 produced by him was found to be a bogus one and only on that ground he was disengaged. It is pertinent to note that the said employee Nagarajan did not appear as a witness before this Tribunal and the Witness Thiru Herbert Tensing, Deputy General Secretary of the petitioner-union has admitted that Thiru Nagarajan submitted a bogus school certificate and only on that ground since he failed to submit any explanation he was disengaged.

8. Thiru N. Sankara Subramaniam who was examined as MW1 has given detailed evidence about his investigation on the complaints against him and also he bogus certificate submitted by the concerned employee Thiru Nagarajan and he has not even been cross-examined by the petitioner union. The evidence of Thiru N. Sankara Subramaniam MW1 remains unassailed.

9. It has been proved by the respondent management that the concerned employee Nagarajan produced a bogus certificate for securing employment and when it was detected and when his explanation was called for, in spite of a reminder, he failed to submit any explanation. Only after that the order of disengagement from service has been passed. Since the claim of the petitioner union is liable to be rejected on this ground alone, it is needless to make comments on the character and misdeeds of the said employee as found in various complaints produced before this Tribunal. Since the concerned workman was not sponsored by employment exchange as per guidelines, and circular Ex. M.1 to M.3, he could not also be absorbed as a permanent employee.

In the result, award passed holding that the action of the management of Indian Bank, Madras in denying permanent appointment to Thiru S. Nagarajan Temporary Sweeper, dispensing with his services from 8-7-91 is justified and the workman is not entitled to any relief. No costs.

Dated, this the 22nd day of October, 1998

S. ASHOK KUMAR, Industrial Tribunal
WITNESSES EXAMINED

For Petitioner-Workman

W.W. 1 : Thiru P. Herbert Tensingh

For Respondent-Management

M.W. 1 : Thiru N. Sankara Subramaniam.

DOCUMENTS MARKED

For Petitioner-Workman :

Ex. W-1/8-3-98 : Circular No. 29/83 (copy).

W-2/3-1-90 : Nagarajan's representation (copy).

W-3/24-4-91 : Respondent's letter to conciliation officer (xerox copy).

W-4/8-7-91 : Respondent's letter dispensing the services of Nagarajan (xerox copy).

W-5/21-5-93 : Petition raising 2K dispute.

W-6/16-8-93 : Petitioner's letter to Regional Labour Commissioner (xerox copy).

W-7/17-8-93 : Minutes of Conciliation proceedings. (xerox copy).

W-8/19-8-93 : Conciliation failure report (xerox copy).

For Respondent-Management.

Ex. M.1/30-9-78 : Circular issued by Ministry of Finance, Govt. of India to all Nationalised Banks & financial institutions (xerox copy).

M-2/4-3-83 : Leave vacancies engagement of sub-staff instruction issued by Indian Bank (xerox copy).

M-3/2-5-84 : Norms for engagement of persons in the leave vacancies of sub-staff members, instructions issued by Indian Bank (xerox).

M-4/24-10-90 : Letter relating to the petitioner's immoral character (xerox).

M-5/14-5-91 : Letter from the Zonal Manager to the petitioner (xerox).

M-6/21-10-90 : Copy of the letter written by Islamia Ilangar Narpani Mandram (xerox copy).

M-7/5-10-90 : Report of Sri Sankara Subramaniam, Inspector of Branches (xerox).

M-8/8-12-90 : Letter No. 4578/90 from Distt. Educational Officer, Devakottai, about non-existence of School during the period 1966 to 1973.

नई दिल्ली, 18 फरवरी, 1999

का.आ. 747—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ इंडिया, के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय चेन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एल-12012/234/95-आई आर (बी.-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 747.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 17-2-1999.

[No. L-12012/234/95-IR (B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT, LABOUR
COURT, CHENNAI

PRESENT :

Thiru S. Sardar Zackria Hussain, B.Sc., B.L., Presiding
Officer.Friday, the 11th day of September, 1998
Industrial Dispute No. 3 of 1997

BETWEEN

Thiru V. Babu, Rep. by General Secretary, Bank of
India Staff Union, 1943, Trichy Road, Ramanatha-
puram, Coimbatore-641045.

AND

The Management of the Zonal Manager, Bank of India,
Southern Zone, No. 42, Cathedral Road, Chennai-600
86.

AWARD

This is an industrial dispute referred to this court for adjudication by the Government of India, Ministry of Labour, by Order No. L-12012/234/95-IR (B-II), Ministry of Labour, dated 4-3-97, the dispute between the workman Thiru V. Babu and the management of Indian Overseas Bank, on the following issue :

Whether the action of the management of Indian Overseas Bank in terminating the services of Shri V. Babu, w.e.f. 2-1-89 is legal and justified? If not, to what relief the said workmen is entitled?

2. The parties did not file their pleadings.

3. Today the dispute is taken up for enquiry. Petitioner and counsel for the petitioner called absent. There is no representation. In the result, an award is passed dismissing the I. D. for default of appearance and non-prosecution by the petitioner. No costs

Dated at Chennai, this the 11th day of September, 1998.

S. SARDAR ZACKRIA HUSSAIN, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 748--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एन-12012/185/92-ग्रार्ड.आर. (बी.-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 748.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 17-2-1999.

[No. L-12012/185/92-IR (B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, MADHYA
PRADESH, JABALPUR

Shri D. N. Dixit, Presiding-Officer.

Case No. CGIT/EC/(C)/186/92

Shri Subhash Kumar,
C/o Chulam Rasool,
Cycle Shop, Main Road,
Cantt., Jabalpur

Applicant

Versus-

The Deputy General Manager,
Canara Bank, Delhi Circle,
Marshall House,
Hanuman Road,
Parliament Street,
New Delhi

Non-applicant

AWARD

Delivered on this 2nd day of February, 1999

1. The Ministry of Labour, Government of India, vide its Order No. L-12012/185/92-IR (B-II) dated 8-9-92 has referred the following dispute for adjudication by this Tribunal :

"Whether the action of the management of Canara Bank, New Delhi in not regularising the services of Shri Subhash Sharma who worked between 1-10-85 and 15-9-86 is justified? If not, what relief the workman is entitled to?"

2. The contention of the workman Shri Subhash Sharma is he was working in Canara Bank, Cantonment Branch since 13-11-81. Initially he was appointed in leave vacancies. There were two permanent vacancies of full time peons in Jabalpur Cantonment Office of the Bank. The workman was employed as full time peon against one of the permanent vacancies with effect from 1-10-85. He continued to work till 15-9-86. His services were terminated with effect from 15-9-86 without any notice or wages in lieu of notice and retrenchment compensation. The workman has put in continuous service of 240 days in a calendar year and cannot be retrenched without notice and compensation. The bank has not given initial appointment letter to the workman. His vacancy was filled by transfer of Shri R. K. Raikwad and by fresh appointment of Shri Suresh Namdeo. In the year 1990, 3 persons were given fresh appointment as peon. The workman is working as part time employee in the cantonment branch of management. The workman wants that he be deemed to be working as a permanent employee from 16-9-86 and be paid wages and allowances as per rules.

3. The contention of the management is that workman was engaged against leave vacancy of peons on various occasions at cantonment branch Jabalpur since 1981. During 85-86, he was engaged against the vacancy due to transfer of peon and worked till the permanent employee joined from the other branch. The workman again worked from 1986 to 1989 in broken periods as and when leave vacancy arose in the post of peon. From 1989, he is being engaged as a part time employee of the bank. There was no need to give notice and retrenchment compensation to workman as he was not a regular employee. There was no vacancy of regular peon in the cantonment branch in the year 85-86. The workman has not worked for continuous 240 days in a calendar year. There are recruitment rules for appointment of peons. The workman was never recruited as per rules. The workman was only casual contractual employee and there was no violation of Section 25 of the I. D. Act. The Bank normally engages peons whenever the regular staff proceeds on leave. There is a panel of daily wage workers maintained in the bank. They are observed in the permanent cadre of peon according to seniority. They are not regular employees of the Bank. The management wants the claim of the workman to be dismissed with cost.

4. The management has stated in para 6 of their written statement that the workman was not in panel as daily wages as per the procedure hence he cannot be equated with other daily wagers on the panel. The daily wagers in the panel are giving seniority at the district level and observed when ever the vacancy arises. Thus the contention of the management is that the present workman will never be observed in the regular vacancy of a peon because he was not impanelled as a daily wage worker as per procedure. Admittedly the Bank is employing the workman from 1981 till filing of the W.S. as and when there was a need for his services. On the one hand, the management is taking work from the workman for the past 18 years. On the other hand, they are saying that he has not been impanelled according to procedure. Thus the management is adopting double standard about the employment of the workman as a daily wage earner. If the employment of the workman is contrary to circulars and rules, why should it continue for 18 long years. The authorities of the management are not allowed to deal the livelihood of the employees in a very casual and selfish manner. The fact that the workman has been working from 1981 upto date in leave vacancies is sufficient to hold that he is fit to be observed in the permanent vacancy of the peon shows as sub staff.

5. The management has filed Exhibit M-1 to show that the workman has worked in leave vacancy of Shri H. S. Dhillon and Shri I. R. Thakur in brief periods. As per written statement of the management in para 3 Shri H. S. Dhillon was transferred from the cantonment branch on 21-9-85 and Shri I. R. Thakur was transferred from this branch on 25-7-86. Thus it has been falsely shows in his statement Ex. M-1 that the workman was working because Shri Dhillon and Shri Thakur has taken leave. In the month of October 85, the workman has continuously worked from 7-10 to 20-10, 22-10 to 26-10, 28-10 to 16-11, 18-11 to 25-11, 28-11 to 30-11, 2-12 to 24-12, 26-12 to 12-1-86, 21-1 to 11-2, 14-2 to 7-3, 4-4 to 26-4, 5-5 to 8-6, 10-6 to 17-6. From 3-10-85 to 13-9-86, he has worked for 247 days. Thus excluding holidays and Sundays the workman has continuously worked in this period in the Bank. The artificial break shown in Exhibit M-1 is creation of management. There was a vacant post due to transfer of Shri H. S. Dhillon and another post due to transfer of Shri I. R. Thakur. These posts were lying vacant for atleast one year and continuously work was taken from workman.

6. Shri A. K. Gupta Officer in cantonment branch of Canara Bank has filed his affidavit to support the contention of the management. In cross examination, he stated that Shri Dhillon was transferred from this branch on 21-9-85 and the workman was appointed in his place in the casual vacancy. Thus the management has admitted that in the vacant post of Shri Dhillon, the workman was employed. The workman performed the duties from 3-10-85 to 13-9-86. As per statement Exhibit M-1, the workman worked for 247 days in this period. The breaks in service are artificial and created to defuse the claim of the workman. Thus the workman has a continuous service of more than 240 days during 12 calendar months as defined in Section 25(B) of the I. D. Act.

7. Prior to termination of services of the workman, no notice was given to him and retrenchment compensation was also not given to him. Thus there is a violation of Section 25-F of the I. D. Act.

8. The workman was employed in the permanent vacancy of Shri H. S. Dhillon and by operation of Shastri Award he will be deemed to be a probationer and he will be deemed to be confirmed in terms of para 495 of the Shastri Award after completion of 6 months of service in the Bank.

9. As the workman has been terminated without notice and retrenchment compensation, this retrenchment is bad in law. The workman is entitled to the post of sub-staff of the management from 16-9-86. It is hereby declared that he will be deemed to be in service of the management from 16-9-86 till date in the post of sub-staff. The award is given in favour of the workman. Within 3 months from the date of publication of the award in the gazette, the management will pay arrears to the workman for the post of sub-staff. If this is not done, the workman shall be entitled to interest at the rate of Rs. 12% per annum up to 651 GI/99-4.

realisation. The workman is entitled to increments also from 16-9-86. Parties to bear their own cost.

10. Copies of the award be sent to the Ministry of Labour, Government of India as per rules.

D. N. DEXT, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 749.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-2-99 को प्राप्त हुआ था।

[मं. पुन-12012/174/96-आई. धार. (बी.-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 749.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 16-2-1999.

[No. L-12012/174/96-IR. (B-19)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL, NEW DELHI

I. D. No. 93/97

In the matter of dispute :

BETWEEN

Shri Man Singh, Spl. Assistant
through The General Secretary,
PNB Employees Union,
W-8, Green Park, New Delhi.

Versus

The Personnel Manager,
Punjab National Bank,
Head Office, Bhikaji Cama Place,
New Delhi.

APPEARANCES :

Shri M. M. Dhingra—for the workman.
Shri M. K. Rai—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/174/96-IR (B-II) dated 17-6-97/7-7-97 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Punjab National Bank in refusing grant of second stagnation increment to Shri Man Singh, Spl. Assistant is legal and justified? If not, to what relief the said workman is entitled?"

2. The representative for the workman M. M. Dhingra has made statement that the workman was not interested

in pursuing dispute further and no dispute award may be given in this case.

3. In view of the statement of the representative of the workman made in the court a No Dispute Award is given in this case leaving the parties to bear their own costs.

Dated : 12-2-1999.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 750.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन में संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एन-12012/180/92-आई.आर. (बी.-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 750.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 17-2-1999.

[No. L-12012/180/92-IR (B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, MADHYA PRADESH, JABALPUR

Shri D. N. Dixit, Presiding Officer.

Case No. CGIT/LC(R) 196/92

Union of the Maharashtra
Bank Employees,
C/o Shri G. P. Gupta,
Yadav Colony,
Jabalpur

Applicant

Versus

The Regional Manager
Bank of Maharashtra
Jabalpur Region,
Wright Town,
Jabalpur

Non-Applicant

AWARD

Delivered on this 28th day of January, 1999

1. The Ministry of Labour, Government of India by its Order No. L-12012/180/92-IR (B-II) dated 18-9-92 has referred the following dispute for adjudication by this Tribunal—

“Whether the action of the management of Bank of Maharashtra, Karmata Branch is justified in not allotting the post of Cashier-in-charge to Shri Ved Prakash w.e.f. 20-12-90 in accordance with the provisions of settlement dated 31-5-88? If not what relief is the workman entitled to?”

2. The contention of the workman through Union is that he was working as a clerk in the Maharashtra Bank at Karmata Branch. The post of Cashier-in-charge fell vacant

in this branch and was given to Shri Ved Prakash from 6-10-90. He was getting a special allowance of Rs. 189 for this post. Shri A. N. Prajapati was transferred to this branch on his own request. From 25-12-90, Shri Prajapati is performing the duties of cashier and drawing this allowance. Shri Prajapati had come on transfer at his own request hence as per agreement between the management and the trade union for first 12 months, he cannot get any allowance post. The management could not give the post of cashier to Shri Prajapati from 25-12-90. The management has thus committed breach of the settlement arrived at with the Union. Shri Ved Prakash was transferred from Karmata branch to Nunsar branch and was relieved from 15-12-90. Shri Ved Prakash was a confirmed employee and as such he could not be deprived the allowance post of cashier. The transfer of Shri Ved Prakash from Karmata Branch is illegal and mala fide. The said transfer is contrary to para 507 of the Shastri Award. The Union wants that the order dated 25-12-90 be declared illegal and relief be given to Shri Ved Prakash.

3. The contention of the management is that Shri Ved Prakash was appointed in the Bank of Maharashtra on 20-6-90 on a probation of 6 months. He was transferred to Karmata branch of the Bank in Jabalpur District and joined there on 11-9-90, there was only one clerk in this branch. Shri Ved Prakash worked as cashier and was getting the special pay as per rule in the temporary capacity. Shri Amarnath Prajapati joined as a clerk in the Karmata branch on 4-12-90. He was a confirmed employee and as per terms of the settlement of 1988 he was entitled for the post of cashier-in-charge. He was accordingly allotted the post of cashier-in-charge. On 10-12-90, Shri Ved Prakash was transferred to Nunsar branch and was relieved on 15-12-90. As Shri Ved Prakash has raised an industrial dispute he was not relieved from Karmata branch. As per settlement of 26-5-88, the seniority of an employee is counted with reference to the date of joining the Bank service in that cadre on probation. As Shri Prajapati was a confirmed employee and Shri Ved Prakash was a probationer Shri Prajapati ranked 1st in seniority and accordingly Shri Prajapati was given the post of cashier-in-charge at Karmata branch. The action of the management is correct and as per settlement between the management and the Union the management wants the dispute to be decided in its favour.

4. Shri Ved Prakash was a probationer and joined the services of the Bank on 20-6-90. He joined the Karmata Branch on 11-9-90. He was confirmed on the post of clerk on 20-12-90, the order is of 6-8-91. On that date, Shri Prajapati was given the charge of cashier-cum-clerk. He was a confirmed bank employee.

5. The order dated 6-8-91 confirmed Shri Ved Prakash from 20-12-90. It is on 6-8-91 that order of confirmation was issued in favour of Shri Ved Prakash. Till 6-8-91, Shri Ved Prakash had no knowledge whether he will be confirmed or the probation period will be extended. On 20-12-90, there were two clerks in Karmata branch—one Shri Ved Prakash and other Shri Amarnath Prajapati. Shri Prajapati was a confirmed clerk and Shri Ved Prakash was on probation.

6. The settlement dated 26-5-88 under clause 2(iv) reads as under—

“Ordinarily allowance posts shall not be allotted to the probationers or to the temporary hands. If however, an allowance post is required to be allotted to a probationer or to a temporary hand owing either to exigencies of business or non availability of a confirmed employee, it shall be allotted temporarily during such exigencies or till availability or eligible confirmed employee.”

7. As per clause-10 of the same settlement dated 26-5-88 counting the seniority amongst members of award, staff working in the branch shall be classified in the following 3 categories for the purpose of counting seniority—

1. confirmed 2. Probationer 3. Temporary.

The confirmed employee will rank 1st, the probationer will rank 11th and temporary will rank last amongst persons belonging to the same category who have joined the same branch.

8. Thus it is clear that Shri Amarnath Prajapati have a reasonable claim for the post of cashier-in-charge at Karmata branch taking into consideration his length of service and other factors.

9. The result of above discussions is that the action of the Bank is correct and as per terms of settlement, the award is given in favour of the management. Parties to bear their own cost.

10. Copies of the award be sent to Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 18 फरवरी 1999

का.ग्रा. 751.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक, अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार की 17-2-99 को प्राप्त हुआ था।

[सं. एल-12012/447/91-आई.आर. (बी-1)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 751.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 17-2-99.

[No. L-12012/447/91-IR(B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 19 of 1992

Parties

Employers' in relation to the management of Allahabad Bank

AND

Their workmen.

Present :

Mr. Justice A. K. Chakravarty, Presiding Officer.

Appearance :

On behalf of Management : Mr. S. M. Coomer, Advocate.

On behalf of Workmen : Mr. D. P. Roy, General Secretary of the union.

STATE : West Bengal

INDUSTRY : Banking

AWARD

By Order No. L-12012/447/91-IR (B-II) dated 26-4-1992 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Allahabad Bank is justified in not allowing promotion to Smt. Jhuna Hazra from 1|3 to 1|2 scale sweeper against the vacancy arising in the same station is correct? If not, to what relief is the concerned workman entitled?"

2. Allahabad Bank Staff Association (in short the union) has raised this dispute for the refusal of the management of the Allahabad Bank to promote the concerned workman Smt. Jhuna Hazra from 1|3 to 1|2 scale sweeper against a vacancy arising in the same station.

3. Union's case, in short, is that in terms of the Government Notification No. 17/2/89 B.O. III(i) dated 30-10-1989 the United Industrial Bank Limited was merged with Allahabad Bank. The Itinda Road Branch of Basirhat of the United Industrial Bank thus became the branch of Allahabad Bank and came to be known as its Basirhat Court Branch, Itinda Road Basirhat. The erstwhile employees of the United Industrial Bank became employees of the Allahabad Bank with effect from 31-10-1989. The salary structure of the United Industrial Bank remained unaffected as per the scheme of amalgamation. One Smt. Mini Hazra was attached to the Itinda Road Branch of United Industrial Bank as a sweeper on consolidated pay of Rs. 60/- and after the merger her consolidated pay was increased to Rs. 175/- by the management of Allahabad Bank. It is alleged that after the merger of the two Banks, Basirhat Branch, Old Market, Opposite P. S. and Basirhat Itinda Road Branch fall under the same station, i.e., within the Basirhat Municipality. Under paragraph 18 of the 5th Bipartite Settlement there are as many as five categories of sweepers depending upon the amount of work they render. Similarly, for the purpose of appointment of such categories of sweepers the premises of the Bank have also been divided in five categories. In terms of promotional policy the gradation of the sweepers ranges from consolidated pay to full scale wages having three scales in between, namely, 1|3, 1|2 and 3|4 and they are to be deployed in these five categories of branches. The concerned workman Smt. Jhuna Hazra made an application on 5-12-1989 to the Regional Manager, Allahabad Bank, Barasat Regional Office seeking her change of cadre from part-time 1|3rd scale to 1|2 scale sweeper as the said vacancy was lying vacant in Basirhat Court Branch, Itinda Road. She was a sweeper of the Basirhat Branch of the Allahabad Bank before the merger of the two Banks. Smt. Mini Hazra was a sweeper of Itinda Road Branch of the United Industrial Bank. The union has alleged that though she was working in the said Branch of the United Industrial Bank on consolidated scale, she was given a double promotion after the merger by promoting her as 4|2 scale sweeper on 1-6-1990 ignoring the claim of Smt. Jhuna Hazra who was working in the Allahabad Bank as

1/3 scale sweeper. The union has challenged such double promotion as violation of the promotional policy dated 22-4-1989 as the promotional policy prescribes promotion of sweepers from consolidated scale to the higher scale only in a graded manner. The union has also alleged that the concerned workman Smt. Jhuna Hazra was senior to Smt. Mini Hazra and her appointment in the 1/3 scale having taken place on 12-9-1988 whereas Smt. Mini Hazra was appointed at Rs. 60/- on 1-1-1987 at the Itinda Road Branch of the erstwhile United Industrial Bank. Such consolidated pay was increased to Rs. 175/- on 30-10-89 after the merger. The dispute raised by the union in this matter having not been headed to by the management and the conciliation having failed, the matter was referred to this Tribunal for adjudication by the Central Government. The union accordingly prayed for promotion of Smt. Jhuna Hazra from 1/3 scale of wages to 1/2 scale of wages with effect from 31-10-89 and all consequential reliefs due to her on such promotion.

4. The management of the Allahabad Bank in its written statement has alleged that Smt. Mini Hazra was appointed as part-time sweeper on 1-1-1987 by the erstwhile United Industrial Bank on a consolidated pay of Rs. 60 per month though she had been sweeping the floor area of 3263 Sq. Ft. of the said Branch. After the merger of the two Banks as per the terms of the Allahabad Bank her consolidated pay was raised at Rs. 175/- per month. Smt. Mini Hazra being a senior employee working in a larger floor area of a branch and for longer hours, the management granted her 1/2 scale of wages from 1-6-90 as per terms of the Allahabad Bank in terms of the settlement dated 24-5-1990. The Bank has also alleged that the change of cadre due to increase in floor area of a branch in the existing premises is to be made on the basis of branchwise seniority as per terms of the settlement dated 22-4-1989 and 24-5-90 and that as there was no change in the floor area in the branch in which Smt. Jhuna Hazra working, there was no question of changing her existing cadre. It is also alleged that though Smt. Jhuna Hazra is junior to Smt. Mini Hazra in terms of their length of service, still then, she (Mini Hazra) had been drawing 1/3 scale of wages since her appointment on 12-9-1988. It is stated that Smt. Mini Hazra was fitted in 1/2 scale wages in terms of paragraph 3(iii)(b) of Part-A, Chapter III of the memorandum of settlement dated 22-4-89 read with clause 22(i) of the settlement dated 24-5-1990. It is also alleged that it was necessary as the floor area of Basirhat Court Branch was 3263 Sq. Ft. and as there was no other sweeper excepting her at the said branch. The Bank also took some other preliminary points which were not pressed at the time of hearing. The management accordingly prayed for dismissal of the reference.

5. The union has filed a rejoinder, reiterating mostly its allegations of the written statement. It is stated that the Allahabad Bank Staff Association being affiliated to Indian National Bank Employees Congress has every right to espouse the cause of the posting on 1/2 scale of wages at Basirhat Court Branch concerned workman. It is also alleged that Smt. Jhuna Hazra should have been given promotion and

having larger floor area, while Smt. Mini Hazra should have been given promotion and posting in the resultant vacancy of Jhuna Hazra in the Basirhat Old Market Branch.

6. Heard Mr. S. M. Coomier, learned Advocate appearing for the management and the representative of the union Mr. D. P. Roy.

7. The union has examined two witnesses, including the concerned workman, while the management has examined only one witness. Both sides also have produced documents in support of their respective contentions.

8. There is no dispute in this case about the merger of the United Industrial Bank with Allahabad Bank on 30th October, 1989 in terms of the Government notification No. 17/2/89-B.O.II(i) dated 30th October, 1989. At Basirhat the United Industrial Bank had one branch at Itinda Road while Allahabad Bank had another branch at Basirhat Court. Admittedly, Smt. Mini Hazra joined her service as sweeper on consolidated pay of Rs. 60 per month at Itinda Road branch of the United Industrial Bank on 1st January, 1987 and after the merger her consolidated pay was raised to Rs. 175 by the management of the Allahabad Bank and thereafter she was further promoted to the category of sweeper enjoying 1/2 scale of wages. It is also admitted fact that the erstwhile Itinda Road Branch of the United Industrial Bank had larger floor area of 3263 Sq. Ft. justifying appointment of 1/2 scale wages category of sweeper. It is also not denied that Smt. Jhuna Hazra was appointed on 12th September, 1988 at Basirhat Court Branch of the Allahabad Bank having a floor area of 2000 Sq. Ft. at 1/3 scale of wages.

9. On the aforesaid admitted facts, the only point for consideration is whether the management was justified in promoting Smt. Mini Hazra ignoring the claim of the concerned workman Jhuna Hazra. Mr. Coomer, learned Advocate for the management for this purpose drew my attention to Clause 11 of the scheme of amalgamation dated 30-10-1989 (vide Ext. M-3) from which it will appear that 'transferee bank shall, on the expiry of a period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of corresponding rank or status of the transferee bank...'. Mr. Coomer accordingly submitted that the Allahabad Bank being under obligation to make a fitment in the scale of pay of Smt. Mini Hazra, had done the same by placing her in the category of sweepers enjoying 1/2 scale of wages upon consideration of her comparative seniority in service along with floor area in which she had been working since her appointment.

10. Mr. D. P. Roy, representative of the union, however, contended that the action of the management in this matter is totally unjustified as it had neither followed the terms of the amalgamation scheme nor the terms of the bipartite settlement entered into between the Allahabad Bank and its employee. In support of his contention he referred to

Clause 10 of the amalgamation scheme which runs as follows : "All the employees of the transferor Bank shall continue service and be deemed to have been appointed by the transferee Bank on the same remuneration and on the same terms and conditions of service as are applicable to such employees immediately before the close of business on the 10th June, 1989." It was accordingly submitted by Mr. Roy that the management followed that provision by increasing the consolidated pay of Smt. Mini Hazra from Rs. 60/- to Rs. 175/-.

11. Since it appears that under Clause 11 of the amalgamation scheme the Bank was under obligation to regularise the services of the transferred employees, the action of the Bank in increasing her consolidated pay to Rs. 175/-, which is the only consolidated pay in terms of the agreement dated 22-4-1989, is a step towards such regularisation of service under the said clause. According to Mr. Coomer it was not a step towards regularisation but an interim relief. There is no such provision for providing interim relief under the scheme of amalgamation. The contention of Mr. Coomer accordingly cannot be accepted. Mr. Coomer further submitted that 1/2 scale of wages of Smt. Mini Hazra was fixed upon consideration of the floor area of the Itinda Road Branch of the erstwhile United Industrial Bank and also because no substitute was available in that branch and also because Smt. Mini Hazra was senior to Smt. Jhuna Hazra on the basis of length of service. This contention of Mr. Coomer is not also acceptable in view of the settlement dated 31-10-1989 vide Ext. M-4 which in Clause 1(i) stated that the seniority of the employees of the erstwhile United Industrial Bank will be calculated on the basis of the service rendered in the respective cadre in that bank. On that basis, though there was lengthwise seniority of service of Smt. Mini Hazra, such service is to be counted as service towards her own cadre, i.e., cadre of consolidated pay sweeper. 'Seniority' as defined in the settlement of 31-10-1989 in Clause d(i) as "Save as otherwise provided in the settlement, seniority shall mean the length of service reckoned from the date of appointment of probation or promotion as full time employee and/or part-time employee, as warranted, in the respective cadre or from the date of change of cadre or assignment of duties of Special Allowance carrying post as the case may be." As per the settlement length of service of a particular employee in a particular cadre shall have no importance in respect of seniority in a different cadre. Smt. Mini Hazra and Smt. Jhuna Hazra being admittedly placed in different cadres, the former's seniority over the latter cannot be counted because of the length of service. Then again, Clause 2(ii) of this settlement prescribes a separate stationwise upto date seniority list of all consolidated pay sub-staffs would be maintained by the Regional Office concerned. Station is defined in Clause 1(b) of the said settlement as "A station shall mean a place within a limit covered by a Corporation or Municipality, notified area council or gram panchayat as the case may be." Both the banks being admittedly situated within jurisdiction of the Basirhat Municipality, the station-wise seniority list of the consolidated pay sweepers must have been maintained. No question of the concerned workmen's inclusion in the said list can arise because she belonged to a different cadre,

namely, 1/3 pay sweeper. Then again, simply because Smt. Mini Hazra had been working in a branch which had greater floor area than the other branch at the station that will be no justification for considering her fit for placement in a different cadre as no substitute was available in that branch. I have already stated that as per settlement it is the station-wise seniority which shall be criterion for promotion. Since Itinda Road Branch had larger floor area and since sweeper to be attached, there shall be entitled to be in the 1/2 pay category of sweepers that such post is to be filled up not by bringing a sweeper from the consolidated pay cadre but by bringing some one from the same cadre from a different branch of the same station or by promoting a person immediately below that cadre from any branch of the same station. Mr. Coomer submitted that there is no policy of transfer of employees in the Bank. Nothing was shown from the settlements that interbranch transfer of employees within a station is not permissible. The claim of Smt. Jhuna Hazra who admittedly belonged to a higher cadre, therefore, was ignored unjustly and without any valid reason what-so-ever by giving double promotion to Smt. Mini Hazra after her regularisation in Allahabad Bank's service.

12. The action of the management of Allahabad Bank in not allowing Smt. Jhuna Hazra her promotion to 1/2 scale sweeper accordingly was unjustified. The Bank accordingly shall promote her to 1/2 scale sweeper from that date, i.e., 1-6-1990 and pay her all arrears dues in terms of such fixation. The Bank shall be at liberty to make any transfer within the same station for the purpose.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer
Dated, Calcutta,

The 1st February, 1999.

नई दिल्ली, 19 फरवरी, 1999

का.आ. 752.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-1, मुंबई के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 19-02-99 को प्राप्त हुआ था।

[सं. एल-12012/98/97-आई.आर. (बी-11)]
सी. गंगाधरन, डस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 752.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-I, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workman, which was received by the Central Government on 19-02-99.

[No. L-12012/98/97-IR (B-II)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

Shri Justice C. V. Govardhan, Presiding Officer.
REFERENCE NO. CGIT-63 OF 1997

Parties :

Employers in relation to the management of Bank
of Maharashtra

AND

Their Workmen.

Appearances :

For the Management : Shri Badrayani, Manager.
For the Workman : Shri S. T. Sahagrabudhi.

STATE : Maharashtra

Mumbai, dated the 8th day of February, 1999

AWARD

1. The Govt. of India by its order dated 24-10-97 has referred the following dispute between the management of Bank of Maharashtra and their workman for adjudication by this tribunal.

"Whether the action of the management of Bank of Maharashtra in dismissing Shri Bhimrao R. Mendhe, Part-time Sub-staff without notice with effect from 25-6-96 is legal and justified? If not, to what relief the concerned workman is entitled and from which date and what other directions are necessary in the matter?"

2. The workman, Party No. 2 in his claim statement contends briefly as follows :

The workman was appointed in the service of Bank in 1985 at Umri branch as part time sweeper on a consolidated wages of Rs. 100 p.m. Subsequently, his salary was increased to 1st 3rd pay of scale and was posted at Dharampeth with effect from 03-8-88. He was issued with a charge sheet dated 10-10-95 alleging that he had suppressed his qualification of having passed the S.S.C. Examination prior to appointment in the Bank and therefore, a charge under clause 19.5 of the bipartite settlement came to be levelled against him. The Bank ordered a departmental enquiry and an Enquiry Officer was also appointed. In the enquiry, the workman accepted the charge that he suppressed the information that he was matriculate before being appointed as a part time sweeper on payment of Rs. 100/- p.m. He had prayed for equal punishment which the management has given to more than 200 employees whose cases were identical to that of the workman. During the course of the enquiry also by the Disciplinary Authority

the workman prayed for a similar punishment be awarded to him; but the Officer without any authority and without application of his mind in a mechanical manner awarded the punishment of dismissal without notice to the workman. The workman preferred an appeal as per the bipartite settlement. The appeal was rejected. In this back ground the workman has raised an industrial dispute under section 2-A of the I.D. Act. The conciliation ended in failure. Hence the reference.

(3) The workman contends that as per clause 19.14 of the bipartite settlement the Chief Principal Officer is empowered to appoint Officers below him to function as disciplinary authority and the appellate authority. Dharampeth, Nagur branch is a large branch controlled by Officer Gr. IV. He has appointed the Enquiry Officer after issuing charge sheet to the workman. He has given a hearing to the workman after the receipt of the findings of the Enquiry Officer. The said Officer Mr. Mangal Wedhe has not passed the final order. The final order has been passed by one Shri M. A. Kher, officer, working in Grade-III of the same branch. The said person who officiated as a Care taker person cannot hold the power to award punishment. The order passed by him is not justified. The workman belongs to Scheduled Caste and comes from a very poor family. On account of the prevailing unemployment problem he has accepted the appointment of a Sweeper on a consolidated salary of Rs. 100/- p.m. In his representation dated 26-6-85 he has not suppressed his passing the 10th standard. The management is in know of the facts that the workman is a matriculate before employing in the bank. The impugned order is therefore, illegal and unjustified. The management has issued a circular dated 10th Feb. 1989 offering all such employees to accept the element of suppression of qualification on their part and a lenient way in the form of punishment was decided to be taken by the management. The circular which should have been circulated to the workman and acknowledged is not shown to him at all. The workman who is not aware of the circular therefore, could not avail the facility granted in the said circular. Coming to know of the circular in the year 1993 he voluntarily made the representation to the Manager, regarding his qualification. Instead of considering his request the management had issued a charge sheet after more than 2 years. Unreserved employees who have disclosed their real qualification were given punishment of warning for the misconduct covered under clause 19.5 (M) of the bipartite settlement. The punishment of dismissal awarded to the workman is grossly disproportionate to the gravity of the misconduct and there is discrimination between him and the others who have been given warning. The order passed by the management is therefore, unjustified and is therefore liable to set aside. The workman is entitled to an order of reinstatement with back wages and other benefits.

(4) The management in their written statement contends as follows : The worker was charge sheeted for the misconduct of making false statement in the documents pertaining to his employment. It is a gross misconduct under clause 19.5 (M) of the bipartite settle-

ment. He was therefore, issued with a charge sheet and an enquiry was also held. The worker voluntarily accepted the charges levelled against him. The Enquiry Officer submitted his findings to the Disciplinary Authority. The disciplinary authority accepted the findings of the Enquiry Officer and awarded the punishment of dismissal without notice after giving a personal hearing to the worker. After the order of dismissal the worker preferred an appeal to the appellate authority and requested for personal hearing. The appellate authority gave a personal hearing and after considering the points raised by him in the appeal, confirmed to dismissal order. Clause 19.15 of the bipartite settlement provides for the Chief Executive Officer for deciding which Officer i.e. the disciplinary authority shall be empowered to take disciplinary action in the case of each office or establishment. The disciplinary authority may conduct the enquiry himself or appoint another officer. Authorities nominated by designation are entitled to pass original orders, or hear and dispose appeals. The Chairman and Managing Director of the Bank has the power to appoint the disciplinary and the appellate authority. The nominated disciplinary authority if, on leave or is not available then there are provisions to give charge to the next signatory in order to run the administration smoothly. These Officers are entitled to officiate in the post exercising powers of the disciplinary authority. The claim of the workman that the Chief Manager who issued the charge sheet, should have passed the final order is not proper as per the bipartite settlement. The allegation that persons who officiate can not hold fundamental and basic powers is not true and correct. The further allegation that the order passed by Mr. Kher is not justified is not correct. The Union is trying to give colour of Casteism by contending that the workman belongs to Scheduled Caste. The union tries to justify the illegal action of the worker under the pretext that the persons having higher qualification are searching for jobs irrespective of their possessing higher qualification on account of unemployment problem. The workman has admitted before the Chief Manager that at the time of submitting his claim he had disclosed that he had passed 8th standard in spite of the fact that he passed S.S.C. examination in the year 1974. The bank had issued a circular dated 10-2-89 offering opportunity to the employees who had not disclosed their true educational qualification to give the same. The worker has failed to take advantage of the same. The claim of the workman that he had no knowledge of the said circular is not correct and is not acceptable. The voluntary disclosure of the qualification possessed by the worker is 41½ years after the circular giving one time offer to the workers. Disciplinary action has therefore to be initiated against the worker who had suppressed his true educational qualification and who have not revealed the same as per the circular dt. 10-2-89. The allegation that the punishment is disproportionate to the gravity of misconduct is not tenable. The reference is to be dismissed.

(5) The point for consideration is whether the punishment of dismissal issued by the bank of Maharashtra to the worker Mr. Mendhe is legal and justified?

The point : The workman who is admittedly a S.S.C. has joined the service of the Bank in the year 1985 of Umre Branch as a part time sweeper on a consolidated salary of Rs. 100/- p.m. He was subsequently elevated to the post of part time sweeper on 1½3rd scale of pay w.e.f. 03-8-1988. He has been issued with a charge sheet dt. 10-10-95 that he has suppressed his qualification prior to his appointment with the Bank and thereby committed a misconduct as per clause 19.5 of the bipartite settlement. The worker has admitted the charge against him in the departmental enquiry conducted against him. The worker has accepted the charge that he suppressed the information that he was a matriculate prior to his appointment as a part time sweeper on a salary of Rs. 100/- p.m. He has prayed for a punishment which the management had imposed on some other employees whose cases were identical with that of himself suppressing their educational qualification at the time of their appointment. The Enquiry Officer has given a finding that the charge has been proved. The disciplinary authority accepted the findings of the Enquiry Officer and has issued a show cause notice. The disciplinary authority has also given a personal hearing to the workman in which also the workman has admitted the charge against him and prayed for a similar punishment, but the disciplinary authority has passed the impugned order of dismissal. The appeal preferred by the workman was also rejected after hearing. It is under these circumstances the workman has raised an industrial dispute under section 2-A of the I.D. Act and upon the failure report of the A.L.C., the reference has been made to this tribunal. The workman does not dispute that he has suppressed his higher qualification of passing S.S.C. at the time of his initial appointment; but he would contend that he being a poor man belonging to the scheduled caste community has stated that he has passed VIII Std. on account of the prevailing unemployment problem in the country. Number of other workers have also given incorrect particulars with regard to their real educational qualifications. It was therefore, decided by the bank to set right things by requiring the workmen to give the correct particulars of their educational qualification and for that purpose they have also issued a circular to the Officers in-charge of other branches in this circular it is specifically stated that those who have not given their educational qualifications correctly could give the same and it is an one time offer made by the bank. In view of the fact that workman has not availed this opportunity given to him. A charge sheet has been levelled against the workman followed by enquiry and order of dismissal. The specific contention of the workman is that he being a part time worker, his work is over before the commencement of the banking hours and he was not shown the circular by the Manager and he has not signed it in token of seeing the said circular. The bank also does not claim that the circular has been shown to the workman and his signature has been obtained. Their contention is that the workman cannot plead ignorance of the circular which gives one time offer to those workman who have not given their real educational qualification to give the same to the bank. According to the bank the union and the workman cannot plead ignorance of the circular dated 10-10-89 and when the workman failed to avail

the opportunity given to him, framing a charge, holding an enquiry and punishing him on the proved misconduct is legal. The workman has extracted the last but one paragraph in the circular in his claim statement itself and it is as follows :

"This circular be circulated amongst all the sub-staff employees and their initials be obtained on the circular. It is important that all sub-staff employees should be made aware of this circular since this will be a once for all opportunity".

When the circular specifically provides that the same should be circulated among all sub-staff and initials obtained on the circular, the claim of the management of the bank that the worker and the union cannot plead ignorance of the circular and on that ground they cannot fail to take advantage of the opportunity given to them is not a tenable one. It is to be noted that this reference is under section 2-A and it is not espoused by the union. As already observed by me, the workman has given an explanation by saying that his working hours being prior to the commencement of the banking hours he had no opportunity to see the circular. This explanation cannot be dismissed as unworthy of acceptance on the ground that he was employed in Nagpur which is a big city in which there are number of branches of the Bank of Maharashtra and in which there are number of sub-staff working. When the management has failed to discharge the onus of circulating the circular dt. 10-10-89 and getting the initials of the worker in token of seeing the circular it is not open for the management to contend that he could have learnt about the circular through other sources and it cannot be accepted at all. The object of the direction given in the circular to circulate the same among the sub-staff being one to set right things and when the circular specifically states that it is one time offer and therefore the sub-staff should be made aware of the circular, unless the management shows that the circular was shown to the worker and his initials was also obtained it cannot be stated that the framing of a charge is proper and valid. It is to be noted that after coming to know of the circular the workman himself has given his real educational qualifications to the management. After two years of the receipt of the information the charge sheet has been issued. Instead of appreciating the voluntary disclosure made by the worker the framing of charge and imposing the punishment of dismissal to the workman who has voluntarily disclosed his real qualification does not appear to be reasonable and justifiable one. It is no doubt true that giving an incorrect particular with regard to the educational qualification is a misconduct; but whether such an act by the worker warrants the extreme penalty of dismissal is the point to be considered. It is the specific case of the worker that more than 200 such sub-staff have been given a warning and after regularisation some of them have even got promotion. While so the order passed by the officiating Chief Manager confirmed by the appellate authority does not appear to be a proper one since it would amount to discrimination. If the other workers who have disclosed their real educational qualifications have been awarded the punish-

ment of warning the management could have afforded some other punishment such as censure which is a grievous one to this workman on account of his failure to take advantage of the opportunity given to him. In the decision reported in LIC page 255 between Dopal Singh & Nuclear Power Corporation of India Limited and another, the Allahabad High Court has held that cancellation of an appointment of an individual on the ground of over qualification is not proper and a person's appointment can be cancelled only if he is under qualified; but not on the ground that he is over qualified and that weightage to the fact of higher qualification could have been given to the concerned person. When even appointment of a person could not be cancelled on account of his higher qualification, dismissal of a person in service for a number of years cannot be justified on the ground that he is having higher qualification. Therefore, it cannot be said to be a justified one by any stretch of imagination on account of the claim made by the worker that he comes from a poor family and he has suppressed his real education qualification at the time of appointment as a part time sweeper on a salary of Rs. 100 p.m. on account of the unemployment problem in the country.

6. The representative of the worker has argued that the punishment has been imposed by Mr. Kher, who is a Grade-III Officer, when Dharampeth branch is an extra large branch controlled by Grade-IB Officer, Shri Mangal Wedhe. It is to be noted that the charge sheet has been issued by Mr. Mangal Wedhe and it was he who is appointed the Enquiry Officer also. During his absence Mr. Kher has been officiating as the Controlling Officer of this branch. It may be, he belongs to Gr-III but that cannot be a ground to hold that the order passed by him is an illegal one on the ground that he has no powers to pass the said order. When an Officer officiates in a particular post during the absence of the incumbent holding the said post, the officiating person has all the powers which the person holding the post is empowered. There cannot be any doubt on this aspect. Further the letter issued by the Personnel Deptt. of the Central Office of the Bank of Maharashtra dt. 02-1-95 specifically states that the authorities mentioned above shall include Officers, then officiating or holding the charge of that post. It was the letter addressed to all batches conveying the nomination of the disciplinary and appellate authorities for the workman employees and this is an order passed by the Chairman of the Managing Director dt. 17-11-94 and communicated to all the branches by the Deputy General Manager of the Personnel Department. Therefore, the contention of the workman that there is no document to show that Mr. Mangal Wedhe has delegated his powers to Mr. Kher to pass order of disciplinary action initiated by him and there is no notification to that effect and therefore, the officiating Chief Manager has no powers of the Chief Manager and he cannot impose the punishment on the workman is not a tenable argument. But as we have already seen the workman who had admitted the misconduct alleged against him is liable for punishment and the punishment imposed on the workman is grossly disproportionate to the gravity of the misconduct said to have been committed by the workman and it is open for the management to award

some other punishment after reinstating the workman.

7. I, therefore, hold on the point that the punishment of dismissal imposed on the workman is neither legal nor justified. In the above circumstances an award is passed holding as follows :

"The action of the management of Bank of Maharashtra in dismissing Shri B. R. Mendhe, part-time sub-staff without notice w.e.f. 25-6-96 is neither legal nor justified. The workman is entitled to an order of reinstatement with back wages. The management is entitled to impose any other punishment like warning or censure etc."

Award passed accordingly.

C. V. GOVARDHAN, Presiding Officer

नई दिल्ली, 15 फरवरी, 1999

का. आ. 753:—औद्योगिक विवाद [अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया, बंगलूर के प्रबन्ध-ित्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध से निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 12-2-1999 को प्राप्त हुआ, था।

[सं. एन.-12012/225/91-आई. आर. (बी-III)/ बी I]
सनातन, डेस्क अधिकारी

New Delhi, the 15th February, 1999

S.O. 753.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Reserve Bank of India Bangalore and their workman, which was received by the Central Government on 12-2-1999.

[No. L-12012/225/91-IR(B-III)|B-I]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, BANGALORE

Dated 28th January, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 71/1991

I PARTY

Shri P. V. Panchalaiah,
S/o Shri P. Vandaiah,
651 GI/99-5

No. 3, Andhra Colony,
Vivekanagar,
BANGALORE-560 047

II PARTY

The Manager,
Reserve Bank of India,
10/3/8, Nrupathunga Road,
Post Box No. 6768,
BANGALORE-560 002.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial disputes Act, 1947 has referred this dispute vide Order No. L-12012/225/91-IR.B.III dated 22-10-91 for adjudication on the following schedule

SCHEDULE

'Whether the management of Reserve Bank of India, Bangalore, is justified in dismissing the services of Shri R. V. Panchalaiah, Ex-Farash of the Bank? If not, to what relief is he entitled to?'

2. The first party was dismissed from service vide Order dated 18-12-89 after conducting a domestic enquiry. At the time of dismissal he was working as Farash, which is a little above of sweepers designation. He was appointed as a sweeper during March 1971. Thereafter he was transferred as Farash w.e.f. 5-12-78 on a request application. He was a chronic absentee and there by caused dislocation of work in the second party. On an earlier occasion on the very same allegations the second party took action and taking into consideration the position in which the first party is placed some cautionary advices were given. These incidents occurred on 17-3-72, 15-4-72, 9-3-73, 5-9-73, 4-5-74 and 16-9-74. Infact during 1976 he has continued to remain absent unauthorisedly and infact a charge sheet was issued on 12-8-76 and after his reply further proceedings were dropped. The above incidents are borne out by records produced by the second party from Annexure IX to XIV.

3. Since the first party remained unauthorisedly absent for 241 days during 1982 a domestic enquiry was conducted and the punishment of reduction of his pay by 3 stages for a period of one year was imposed on him. Earlier to this in another domestic enquiry his pay by 2 stages on permanent basis were imposed.

4. Initially he was served with a charge sheet on the following allegations :

- 1(i) You are habitually absenting yourself from your office duties without first obtaining permission from the Competent Authority.
- (ii) You either submit your application for leave very late or do not submit it at all.
- (iii) Your applications for leave, on medical grounds, are not supported by medical certificates wherever necessary.

(iv) You have remained unauthorisedly absent for a period of nine months and four days (274 days) between 17th April 1986 and 31st July 1988 in as many as 78 spells. The details of the same are given in the Annexure.

2. You are, therefore, charged with having committed breach of Regulation 39(1) of Reserve Bank of India (Staff) Regulations, 1948.

3. This charge-sheet is accordingly issued to you under Regulation 47 of Reserve Bank of India (Staff) Regulations, 1948.

5. Since the reply of the first party was vague a domestic enquiry was conducted. 2 witnesses were examined during the domestic enquiry and necessary documents evidencing his unauthorised absence were marked as exhibits. Taking into consideration the misconduct being proved he was dismissed from the service by the competent authority on 16-12-1989.

6. The first party in his claim statement tried to justify his unauthorised absence due to domestic problems and to take care of his children who use to fell sick now and then. He has also tried to justify on the ground on many occasions he has sent leave applications and some times supported by medical certificates. Second party in their counter statement denied the contention of the first party and contended that taking of lenient view does not make any effect on his attitude and therefore the dismissal was the only option open to the second party.

7. Since his dismissal is proceeded by conducting a domestic enquiry a preliminary issue was framed on this point. After taking the evidence of 3 witnesses from the management side and the first party, this tribunal passed an order dated 14-2-1994 and set aside the domestic enquiry as defective after giving cogent reasons for the same. Consequent to this order the second party was directed to prove the misconduct by placing independent evidence before this tribunal.

8. The second party examined MW-4, A. R. Balakrishnan, who was examined as MW-2 earlier in the domestic enquiry and MW-5 Smt. Brunda Anand. The first party has not tendered any evidence. Now the point that requires determination are :

1. Whether the second party proved the charges levelled against the first party.
2. If the above point is held in the affirmative what should be the resultant punishment to the first party.

9. POINT NO. : 1 MW-4 stated in his evidence that in the year 1988 he was working as Assistant Manager where the first party was working as Farash. He was in charge of administration and processing of leave application of the staff. He was also incharge of receiving leave applications of the first party. Since the first party was irregular a charge sheet Ex. M-1 was issued. This action was taken as the first party was totally absent for 274 days i.e. 17-4-86 to 31-7-88 in a gap of 78 spells. Since the first party has not

given satisfactory reply a domestic enquiry was conducted by an intimation letter Ex. M-3. The enquiry was started on 23-9-88 and two witnesses were examined by the second party. He was also examined in the domestic enquiry where he has stated the particulars of the absence of first party. Ex. M-4 is a statement showing the absence of the first party. Since the misconduct was proved a finding was given as per Ex. M-5.

10. Nothing much was elicited in his cross-examination as there could not be any evidence when his absenteeism was proved conclusively.

11. MW-5 Smt. B. Runda Anand deposed that one of the duty entrusted to her was to receive the statements regarding the staff who remain absent and after receipt of such statement she consolidate the same and submits to the officer. Ex. M-6 is a statement prepared by her. She was also maintaining the attendance register relating to sweepers and Farashs. According to Ex. M-6A the first party was absent from March, 1988 to 28th July, 1988. The first party was most irregular and this 38 days of absence was on 19 occasions.

12. Having regard to these facts and circumstances the learned advocate for the second party submitted that the management have shown maximum leniency by taking into consideration that the first party was a weaker section of the community and lowest paid employee, but these considerations was not taken by the first party to improve his conduct. The learned advocate further submitted that in these facts and circumstances there could not be any order except the order of dismissal in view of the fact almost 6 to 8 times he was punished with reduction of pay scale, warning, censor etc. It is further submitted there could not be any scope to urge by the first party of any victimisation and unfair labour practice on the part of the second party.

13. The evidence, both oral and documentary established beyond reasonable doubt that the first party is a habitual and chronic absentee and several consideration and concessions shown by the second party was not made the first party to realise his mistake. Such leniency gave some courage to this workmen to continue his misconduct and the second party found that his conduct was uncontrollable.

14. To substantiate the action of the second party reliance was placed by the learned advocate for the second party to the decided case laws in Mandeep Kumar and others vs. State of Haryana and another reported in (1996) 1—S. C. 292, A. M. Eshwarachar Vs. Executive Engineer (Electrical) reported in I.L.R. 1994 KAR 3461 and K. I. Varkey Vs. FACT Ltd. reported in volume 82 FUR 142 Kerala H.C.

15. No one can dispute with the object of case laws cited above which unequivocally mandates nothing short of dismissal in a proved misconduct of this nature.

16. The second party has taken into consideration each and every circumstance and having frustrated to the conduct of first party have ordered for dismissal.

sal from his service. In fact the competent authority in his order Ex. M-12 proposed to treat the period of unauthorised absence covered by the charge sheet shall be regularised by grant of Extraordinary leave without pay and allowances not counting for increment. Therefore it can not be said the order of dismissal is not justified. Therefore I hold this point in the affirmative.

17. POINT NO. 2 : In Mandecp Kumar and others a case cited at supra in the similar circumstances, of course not as grave as this case, the Supreme Court directed to give a fresh opportunity to improve his excellence in the performance of duty. They have also put a condition that if the Appellant absents himself from duty without leave even on a single occasion during next two years, his services may be discharged. On reinstatement, pursuant to this order, the appellant would not be eligible for payment of arrears of salary.

18. The first party was a sweeper and therefore it is natural to infer that he has socially can not par with others in the society. It is on record that he has got 5 children and a wife to feed. Of course due to setting aside of the validity of domestic enquiry he is getting 50 per cent of last paid wages. He may be living in this meagre amount but he alone is responsible for that. Therefore this tribunal should find whether the benevolent provision of Section 11A can be extended in his favour.

19. Section 11A was introduced by the Act 45/71, investing the power to the adjudication authorities to examine the cases resulted in the dismissal or discharge of the workman and to find out any justification to alter such orders keeping in view the plight of workman. While applying this provision the adjudication authorities shall rely only materials on record and there is no scope for taking any fresh evidence in relation to this matter. Therefore the intent of Sec. 11A is empowering a jurisdiction to set aside the order of discharge or dismissal of a workman with attendant facilities or only reinstatement.

20. I am aware that the interference of an order passed by the domestic enquiry amounts review, but to review of a report as it relates to interference regarding quantum of sentence is not a review but exercising power under Sec. 11A of the Act. Therefore there cannot be any impediment to exercise the jurisdiction under this provision which is a beneficial legislation in favour of the workman. No doubt the circumstances of each case shall be weighed with care and caution. An element of using the common sense can not be deemed to have been inferred as exercising the power unnecessarily.

21. Here is the workman who has socially down-trodden and several opportunities given by the management was virtually misused by him. However a last and final chance shall be extended to his existence. Taking this into consideration an order of reinstatement without any other benefits does not defeat the intentment of law. Hence I hold this point accordingly.

22. In the result I make the following order.

ORDER

23. The order of dismissal made by the second party on the proved misconduct is justified. However taking into consideration the benevolent provision of Section 11A the second party is directed to reinstate the first party to the post he was holding earlier to the wage scale which he was drawing at the time of dismissal. He is not liable to any back wages. If he absents himself from duty without leave even on a single occasion during next 2 years his services may be discharged. The reference is answered accordingly.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 28th January. 1999).

Justice R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 17 फरवरी, 1999

का. आ. 754 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया, जयपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-2-1999 को प्राप्त हुआ था।

[नं. एल.—12012/25/95—आई. आर. (बी.—1)]

सनातन, डेस्क अधिकारी

New Delhi, the 17th February, 1999

S.O. 754.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Reserve Bank of India, Jaipur and their workman, which was received by the Central Government on 16-2-1999.

[No. L-12012/25/95-IR(B-I)]

SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, JAIPUR

Case No. CIT-11/97

Central Government Notification No. L-12012/25/95-
IR(B-1) dated 29-1-95/5-2-97.

Hira Lal Goyar S/o Shri Gendilal, House No. 259,
Needa ki Mori, Shyampuri, Harijan Basti, Jaipur.

V/s.

Reserve Bank of India, Jaipur.

PRESENT :

Shri J. P. Sharma, Presiding Officer.

Shri S. N. Kumawat, Advocate for the employee.

Date of Award :—08-1-1999.

AWARD

The Central Government vide notification mentioned above has referred the following dispute for adjudication :—

“Whether the action of the management of Reserve Bank of India, Jaipur is justified in terminating the services

of Shri Hira Lal Goyar, part-time sweeper w.e.f. 21-1-1994 in violation of Section 25F of the I.D. Act, 1947, as he has completed more than 240 days of service in a year prior to the date of termination? If not, to what relief the workman is entitled to?"

The workman vide order dated 8-12-97 was given an opportunity to file his claim and the case was adjourned sine-die. On 6-1-99 the workman submitted an application that there has been a compromise between him and the Reserve Bank of India and so he wants to withdraw the case. The workman was identified by his advocate today. The workman did not file his claim. As per the application of the workman there does not remain any dispute between him and the opposite party. Accordingly no dispute award is passed. The copy of the award may be sent to the Central Government for publication u/s 17(1) of the Industrial Dispute Act, 1947.

J. P. SHARMA, Presiding Officer

नई दिल्ली, 17 फरवरी, 1999

का. आ. 755.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एंड जयपुर के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-2-1999 को प्राप्त हुआ था।

[नं. एल.-12011/15/96-आई. आर. (बी.-I)]
सनातन, डेस्क अधिकारी

New Delhi, the 17th February, 1999

S.O. 755.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workman, which was received by the Central Government on 16-2-1999.

[No. L-12011/15/96-IR(B-I)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 8/98

In the matter of dispute between :

The General Secretary,
State Bank of Bikaner and Jaipur Employees Federation,
Delhi State, C/o State Bank of Bikaner and Jaipur,
Vasant Kunj Branch, New Delhi-110005.

Versus

The Regional Manager-I,
State Bank of Bikaner and Jaipur,
Ahimsa Bhavan, Shankar Road,
New Delhi-110001.

APPEARANCES :

Shri S. K. Verma, General Secretary of the Union.
None for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/15/96-IR(B-I) dated 2-1-98 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of State Bank of Bikaner and Jaipur in violating agreed understanding arrived at during Bi-partite talks held on 6-2-92 and the policy relating to filling up of post of Special Assistant Cadre is just and fair? If not, to what relief the Union and the workmen are entitled to?"

2. Shri S. K. Verma, Union Secretary of the workman has made statement that since the management has implemented the policy so they did not want to pursue the matter further.

3. In view of this situation No Dispute exists between the parties and No Dispute Award is given in this case leaving the parties to bear their own costs.

Dated : 9-2-99.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 17 फरवरी, 1999

का. आ. 756.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे, नई दिल्ली के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-2-99 को प्राप्त हुआ था।

[नं. एल.-41012/93/87-डी. II (बी)/बी. I]

सनातन, डेस्क अधिकारी

New Delhi, the 17th February, 1999

S.O. 756.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Northern Rly., New Delhi and their workmen, which was received by the Central Government on 16-2-99.

[No. L-41012/93/87-D. II (B)/B. I]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 99/88

In the matter of dispute between :

Shri Dil Bahadur s/o Shri Bahadur Lal
c/o Shri Jugbahadur, r/o E-4/12,
Brar Square, Railway Colony,
Delhi Cantt., Delhi,

Versus

The Divisional Railway Manager,
Northern Railway, Pahar Gunj,
New Delhi.

APPEARANCES :

Shri S. K. Gupta for the workman.
Shri H. L. Nanda for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-41012/93/87-D.II(B) dated 30-9-88 has referred the following industrial dispute to this Tribunal for adjudication:—

“Whether the action of the management of Divisional Railway Manager, Northern Railway, New Delhi in terminating the services of Shri Dil Bahadur w.e.f. 18-2-86 is legal and justified? If not, to what relief and from what date he is entitled to?”

2. Shri Dil Bahadur workman in his statement of claim has alleged that he was employed as Khalasi on 23-2-83 by the Management and his services were regularised w.e.f. 27-8-84 in pay scale 196-232. The Medical Sickness Certificate dated 27-8-84 was also issued to the workman. He got two annual increments as admissible under the rules but his services were terminated illegally by the management by verbal orders on 18-2-86. He had worked upto 16-2-86 and 17-2-86 was his rest day. On 18-2-86 he was told that he will not be allowed to mark his attendance and his services had been terminated w.e.f. 17-2-86. He approached the higher authorities, made different representations but to no result. Conciliation proceedings were initiated on his demand notice but resulted in failure. Hence this reference.

3. The Management filed written statement in which it denied the facts stated in the statement of claim and alleged that the workman had worked upto 16-2-86 and thereafter he did not turn up for duty but he had himself unauthorisedly absented from duty. It has also been alleged that the applicant had served with S.F. 5 dated 26-5-87 for unauthorised absence from duty for the period 16-2-86 till date and disciplinary action under departmental rules was still pending against him.

4. The workman himself appeared as WW1 besides Khazan Singh WW2, Nem Singh WW3. Management did not examine any witness nor produced any record in support of its allegations.

5. I have heard representatives for the parties and have gone through the record and written arguments filed by them.

6. The case of the management was that he had absented from 18-2-86 and enquiry regarding his absence from duty was initiated against him which was still pending. No evidence to this effect has been produced by the management. There is no witness of the management or any document which could show that on his absence from duty from 18-2-86 he was sent any notice to report for duty. A copy of the standard form of chargesheet dated 26-5-87 is on record and there are certain copies of letters sent to the workman. These documents actually pertain to the year 1991 i.e. after 5 years of his alleged absence from duty. If an employee is absent from his duty on a particular date and continues to be absent for longer time without any intimation the management was duty bound to send him a notice to appear, resume duty or to show cause as to why he had been absent from duty. In the alleged chargesheet dated 26-5-87 there is only one ground regarding his absence from duty has been issued to him by the management. He was regular employee and was regularised in the scale 196-232 w.e.f. 27-8-84. In the written arguments the management has stated that the workman was given full opportunity to defend his case but he has failed to answer the same and the charge of misconduct stood proved and he was treated as having absconded from duty w.e.f. 16-2-86. This part of the result of the enquiry as mentioned in the written arguments dated 27-5-95 is entirely contrary to record. No enquiry Officer nor the enquiry proceedings nor the result of enquiry or the order of any competent authority regarding treating him absent from duty and consequent to termination of his services has been placed on record. It appears that till 1991 when these proceedings were being conducted the workman was still in service and his services had not been terminated. The conclusion of the enquiry or the date on which he was treated as absconded from duty have not been proved or produced in this case. The workman has placed on record some documents which he had been writing to the General Manager dated 25-5-86 and 23-10-86 are on record but no reply seems to have been sent by the management though these letters were sent by registered post. The Management it appear has been very calous and negligent in dealing with the matter of this workman throughout. For months together no intimation was sent to him regarding enquiry and for years together the enquiry was not concluded as per record produced before this Tribunal by the Management. Till date no such order had been produced or shown to the court. The Management had been proceeded against ex parte but in the interest of justice the same was set aside but even then the management did not bother to prove its case before this Tribunal. In view of this situation I am left with no option but to hold that the workman deserves to remain in employment of the Management and the action of the management was not at all justified. The

workman is directed to be reinstated with full back wages from 8-2-86 with continuity of service and all other related benefits. Management is also directed to pay Rs. 5000/- as special costs in this case.

Da. 10-2-99

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 757.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल रेलवे, भोपाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-1999 को प्राप्त हुआ था।

[सं. एल-12012/38/91-आई. आर. डी. यू./बी-1]

सनातन, डैस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 757.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway, Bhopal and their workman, which was received by the Central Government on 17-2-1999.

[No. L-12012/38/91-IRDU/B.I.]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR-
COURT, MADHYA PRADESH, JABALPUR

Presiding Officer Shri D. N. Dixit

Case No. CGIT/LC(R)(207)/91

Shri Rambilas, S/o Shri Ramdayal,
Gangman of Central Railway,
C/o Shakir Hussain Advocate, Harda.

Applicant.

Versus

The Union of India through
General Manager, Central Railway
Bombay and the Divisional Railway
Manager Central Railway, Bhopal

Non-applicant.

AWARD

Delivered on this 29th day of January 1999

1. The Ministry of Labour, Government of India vide its order No. L-12012/38/91/IRDU dated

12-11-91 has referred the following dispute for adjudication by this tribunal:

“Whether the action of the Central Railway Bhopal in terminating the services of Shri Rambilas S/o Shri Ramdayal was justified? If not, what relief the workman is entitled?”

2. The contention of workman Shri Ram Bilas is that he was a permanent employee of the Central Railway and was getting pay from 2-12-97. He was working on service card No. 138775 issued by PW1(R), Khandwa. He was not allowed to work from 28-5-88 by PW1(Harda). Before termination of service, he has not been given a notice for termination of service. The workman served under different railway authorities and this service period was included in his Service card No. 138775. The workman filed an appeal to the Divisional Engineer, Central Railway, Bhopal on 26-5-88 but no relief was granted. The workman prays that he be treated on service continuously and wages and allowances be paid to him.

3. The case of the management is that the present petition is barred by limitation. The workman worked on the railway on the basis of card No. 138775 issued by PW1, Khandwa. This card was called from PW1, Hoshangabad. On examination it was found to be fake. Thus the work carried out by the workman on the basis of this card was without any basis. The workman left the job wilfully. The workman has secured employment by producing a fake card. The management wants the petition of the workman to be dismissed with cost.

4. The contention of the management is that service card No. 138775 issued by PW1(R), Khandwa is fake. The burden of proving this is on the management. The management has examined Shri S. M. Mansoori, CPWI, Khandwa. He has stated that at Khandwa, office of PW1(R), had never existed as such service card No. 138775 is fake. This witness has produced card issue register of PW1 office Khandwa. This does not contain an entry that card No. 138775 was issued from this office.

5. The workman stated on oath that he received service card No. 138775 from FWI(R), Khandwa. He was cross examined on his affidavit. He has stated in cross examination that he was given service card by FWI Bid. He has further stated that this card was not given to him by PW1, Khandwa.

6. In the statement of claim dated 2-4-92 at Para-2, the workman Rambilas has stated that “was working on the service card No. 138775 issued by FW1(R), Khandwa”. As against this, the workman has stated on oath in cross examination recorded in his affidavit dated 16-1-98 that he was received the card from PW1 Bid. He has specifically denied that he was issued the service card by PW1, Khandwa. Thus the workman has given two versions which are completely different from each other about the fact from where service card No. 138775 was issued to him.

7. The management has proved by negative evidence that service card No. 138775 was not issued to him by PW1(R), Khandwa. The evidence of

management is more reliable in this point. Once it is doubtful which authority issues service card. The natural presumption is that this service card was a fake as alleged by the management. The consequence is that the workman cannot get service in the Central railway on the basis of fake service card. The award is given in favour of the management and against the workman. Parties to bear their own cost.

8. Copies of the award be sent to the Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 758.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया, ग्वालियर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-1999 को प्राप्त हुआ था।

[सं. एल-12012/62/89-आई.आर. (बी-1)]

सनातन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 758.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India, Gwalior and their workman, which was received by the Central Government on 17-2-99.

[No. L-12012/62/89-IR(B-1)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR-
COURT, MADHYA PRADESH,
JABALPUR

Presiding Officer Shri D. N. DIXIT

Case No. CGIT/LC/(R)(101)/89

Shri B. R. Kadam

Applicant.

Versus

The Regional Manager,
State Bank of India,
Gwalior.

Non-applicant.

AWARD

Delivered on this 4th day of February, 1999

1. The Ministry of Labour, Government of India vide its order No. L-12012/62/89-IRB. II dtd. 19-5-89

has referred the following dispute for adjudication by this tribunal—

“Whether the dismissal of Shri B. R. Kadam, Clerk-cum-typist of State Bank of India, Morar Gwalior by the management of State Bank of India Gwalior is justified? If not, what relief the worker is entitled to?”

2. The contention of the workman Shri B. R. Kadam is that he was working as a clerk in the service of management at Morar branch when he was given a charge sheet on 21-12-83 in respect of following charges:

(A) The workman by his own hand noted the entries in the Recurring Deposit Pass books without ensuring that the amounts were actually deposited, with a malafide intention in the A/s No. 1698-Ku. Pramila Goswami, A/s No. 1699 Ku. Madhu Goswami, A/s No. 674-Ram Swaroop Goswami and Pramila Goswami and A/s No. 675—Ramswaroop and Ku. Madhu Goswami.

(B) The workman has authenticated the balance in the above pass books, with intention to mislead the above depositors and a cover up his malafides.

(C) On 30-3-83, the workman draw Rs. 1800 from his SBI account and deposited Rs. 500 in A/s No. 1698—Ku. Pramila Goswami, Rs. 500 in A/s No. 1699 Ku. Madhur Goswami, Rs. 400 in A/s No. 674 R. S. Goswami and Rs. 400 in A/C No. 675 of Shri R. S. Goswami, in order to cover up his malafide acts.

(B) As stated in charge-A, workman unauthorisedly made entries in pass Book A/s No. 675 of Rs. 500 where an actual amount of Rs. 400 only was deposited by him on 30-3-83. Thus the workman failed to deposit remaining amount of Rs. 100 in A/s No. 675.

(E) The Acts of workman as detailed in charges A to D are sufficiently evidencing that the moneys in question received for credit of depositors A/Cs unauthorisedly and with malafide intentions were retained by the workman for his own personal gains. The workman thus acted in a manner highly prejudicial to the interest of the banks.

3. The workman was put under suspension from 26-9-83. A departmental enquiry was held. According to workman which is illegal and bad in law. No formal complaint was filed with the Bank about mislead of the workman. The charges were not proved by any witness. Only Shri C. T. Servette was examined in the DE and he has identified only 3 initials of the workman. The workman wanted a second opinion on the handwriting, this request was turned down by the DE Officer. The amount was deposited by the customer by pay slip and these pay slips has not been produced in evidence. Charge No. 4 has not been proved as per report of the DE Officer.

Opportunity to lead defence evidence has not been given to the workman.

4. Further the contention of the workman is that in reply to show cause notice of dismissal, the workman has submitted his reply. This reply has not been considered by the appellate authority. The order of discharge from service was illegal. Such a punishment is not provided in the rules. The order of discharge was made effective without payment of terminal compensation. Thus the order is void ab-initio. There was no evidence conclusively to prove the guilt of workman in respect of any charge. The punishment is excessive. The workman prays that order dated 17-2-86 by which he has been discharged be declared illegal and he be paid wages as per rules from this date.

5. The contention of the management is that the workman made false entries in the 4 pass books mentioned above without deposit of the amount, the workman has initialled these 4 pass books. Either he accepted the money on the date of initialled the pass books and used this money for his own needs. Later on 30-3-83, withdrew Rs. 1800 from his saving account and deposited the amount in the A/C of above mentioned 4 Recurring Deposit Pass books. The second option is that he did not receive the money on the dates he initialled the pass books. This procedure itself was irregular and illegal. A charge sheet was given to the workman and enquiry was held. The workman participated in this enquiry actively. Copies of all documents were given to him. He had assistance of a co-worker in the DE proceedings. The Enquiry Officer found charge No. 1 fully proved, charge No. 2 & 3 partly proved and charge No. 4 not proved. On the report of the DE officer, a show cause notice was given to the workman about the proposed punishment. The workman admitted that he has initialled 4 pass books without verifying whether the amounts had actually been deposited. The workman admitted the mistake.

6. The Disciplinary Authority gave the punishment of discharge to workman. The workman preferred an appeal and in the appeal also, the appellate authority agreed the findings of the Disciplinary Authority. The punishment given to workman is balanced and in proportion to the misconduct.

7. The management submits that the enquiry be held to be legal and valid and the punishment imposed on the applicant be justified. The reference be answered in favour of the management.

8. The order sheet of this court dated 7-6-95 states that workman has admitted the DE and the findings of DE. The workman assails only the quantum of punishment and perversity of the findings. The case has been fixed for arguments on these two points.

9. From 7-6-95 to 24-10-97, the workman appeared along with an Advocate so many times but the order sheet dated 7-6-95 has not been challenged. On 24-10-97, an affidavit of Shri Shrinivas Bhagwat Advocate has been filed which states that the workman has not been admitted the DE proceedings or its fairness. The order sheet dated 7-6-95 has not been challenged

in appeal. On 24-10-97, when affidavit of Shri Bhagwat has been filed, it has not been prayed orally or by an application that the order dated 7-6-95 be reviewed. The contents of the affidavit are information simpliciter. No weight can be attached to such information. The order sheet dated 7-6-95 remains relevant. The DE proceedings were not challenged by the workman. In his reply to show cause notice dated 7-2-86, there is absolutely no submission regarding the enquiry being invalid for any reason nor the findings of the Enquiry Officer were challenged. These points has also not been raised before the Appellate Authority. For the first time the mode of enquiry and the findings of the Enquiry Officer has been challenged in the statement of claim.

10. On perusal of the DE Proceedings filed by the management shows that all the copies of the documents were given to the workman. He had the assistance of a co-worker in the DE proceedings. Management witness Shri Sarwate was cross-examined by the co-worker. The submissions on behalf of the workman were made by the co-worker.

11. It has been argued on behalf of the workman that opportunity to examine defence evidence was never given to the workman. In the DE proceedings, it is nowhere mentioned that workman wanted to lead defence and the same was denied. The order sheet of the DE proceedings does not mention even oral prayer by the co-worker of workman to examine defence. It is found that the workman never intended to give defence evidence in the DE Proceedings though he has opportunities to make such a request.

12. The proceedings of the DE disclose that the DE was conducted in a proper manner giving all opportunity to workman and the procedure was in accordance with principles of natural justice. The DE is proper, valid and legal.

13. The workman in reply to show cause notice by Disciplinary Authority has stated that he has endorsed the 4 pass books mentioned above without verifying whether money was actually deposited in the Bank or not. The workman has admitted his mistake. The workman has also admitted that his act may be considered as 'silly mistake.'

14. In the departmental enquiry charge No. A is proved, charge No. B is proved to the extent that the workman authenticated the deposits. Charge No. C is also proved. Charge No. D is not proved. The charge against the workman that he acted in a manner highly prejudicially to the interest of the Banks is proved to the extent of making certain entries in the Recurring Deposit Account pass books and un-authorisedly authenticating the balance in each of the 3 Recurring Deposit pass books. As the workman admitted to have initialled pass books without verifying the fact whether the amount has been paid to the bank or not. There was no need to examine any witness in the DE proceedings. Whether the workman installed the pass books knowingly or unknowingly is misconduct. The subsequent deposit of Rs. 1800 in the 4 pass books proves that the workman was negligent and acted in a rash manner. This further prove so that he has very little respect for the Banking procedure and

for the good will of the bank. The reply to show cause notice does not show that the workman was repentant of what he did. It shows that he thought the whole thing to be a 'silly mistake'. Such apathy to banking procedure and rules clearly indicates the casual manner in which the workman took the whole matter even after enquiry.

15. The management proved beyond reasonable doubt that the workman acted contrary to rules and ignore the procedure of the bank. The workman is guilty of misconduct.

16. The Honourable Supreme Court has held in the case of State of Mysore and others versus Shivabasappa Shivappa reported in AIR 63 SUPREME COURT 375 that domestic tribunals exercising quasi-judicial functions are not courts and therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by direct rules of evidence. They can, unlike court obtain all information material for the points under enquiry from all sources and through all channels without being fettered by rules and procedures which govern proceedings in court. Their only obligation which the law cause on them is that they should not act on any information which they receive unless they put it to the party against whom it is to use and give him a fair opportunity to explain it.

17. The Honourable Supreme Court in the case of Management of Balipara Tea Estate versus its workmen reported in AIR 1960 SUPREME COURT 191 has laid down that in making award tribunal has only to be satisfied that the management is justified in coming to the conclusion that charges against workman is well founded. Tribunal misdirects itself in insisting upon conclusive proof to guilt to be produced by management in enquiry before it. Applying this test, I find that the management is justified in coming to the conclusion that charges against the workman are well founded.

18. The Honourable Supreme Court in case of State Bank of Bikaner & Jaipur and others versus Prabhu Dayal Grover reported in 1995 AIR SCW 4117 has held that when disciplinary authority agreeing with findings of enquiry officer and accepting reasons therefor and going through entire proceedings and applying its findings there to before concurring with findings of Enquiry Officer records his own findings. The order of Disciplinary Authority is not liable to be struck down because it was a non-speaking order. Thus what is contemplated is that the disciplinary authority should go through the entire DE proceedings and apply his mind. His findings are final. In the present case, the disciplinary authority has discussed the entire evidence produced in the DE and then has come to the conclusion of the workman being guilty of misconduct. This findings has been confirmed by the Appellate Authority.

19. It has been argued that the workman cannot be given the punishment of discharge. The Disciplinary Authority stated that he is taking a lenient view and discharging the workman from the service of the bank according to para-18 28 of Desai Award read with para 521-5(a) of the Shastri Award. This discharge order has been confirmed by the Appellate Authority. I find that this order of discharge is valid and legal.

651 GI/99—6

20. Honourable Supreme Court in the case of Union of India versus Permananda reported in 1989 SUPREME COURT (L&S) 303 has held that ordinarily the tribunal should not interfere with punishment awarded by Competent Authority in departmental proceedings on the ground of penalty being excessive or disproportionate to be misconduct proved. If the punishment is based on evidence and is not arbitrary, mala fide or perverse.

21. Honourable Supreme Court in case of State of UP and others versus Nand Kishore Shukla and other has laid down in 1996 AIR-SCW-1662 that nature of punishment to be imposed on delinquent by disciplinary authority will not be examined by the court in appeal. One out of several charge proved against delinquent employee and disciplinary authority passing order of removal. The court will not interfere.

22. The result of our discussion is that the misconduct of the workman is established. The punishment given to him is proportionate to his misconduct. The workman is not entitled to any relief how the action of the management is hereby confirmed. The award is given in favour of the management. Parties to bear their own cost.

23. Copies of the award be sent to the Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 759—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मांगली बैंक लिमिटेड के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-1999 को प्राप्त हुआ था।

[सं. एन-12012/173/93-आर्डी.आर. (बी-1)]

सनातन, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 759.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Sangli Bank Ltd. and their workman, which was received by the Central Government on 17-2-1999.

[No. 1-12012/173 93-IR(B-I)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE.

Dated, 3rd February, 1999

PRESENT:

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 57/93

I PARTY

Anant S. Onkar,
Gollapalli Galli,
Near Shriram Gate,
Bagalkot-587101,
Bijapur District.

II PARTY

- (1) The Chairman,
Sangli Bank Limited,
Head Office,
Rajawade Chowk,
Sangli-416418.
- (2) The Regional Manager,
The Sangli Bank Ltd.,
Regional Office,
Marathi Galli,
Belgaum.

AWARD

1. The Central Government by exercising the powers conferred by clause (4) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Dispute Act, 1947 has referred this dispute vide Order No. L-12012/173/93-IR.B.I. dated 21-9-93 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Sangli Bank Ltd. in terminating the services of Shri Anant S. Onkar, temporary clerk is legal and justified? If not, to what relief the workman is entitled to?"

2. This dispute demonstrates a very interesting question of fact and law which is very peculiar in the facts and circumstances of this case.

3. The first party in his claim statement contends that he was working as a clerk in the second party bank at Bagalkot branch continuously from 1-4-89 to 31-7-92. Due to his continuous service he made several representations to absorb him in the bank but without any success. As a clerk he has acquired intimate knowledge and experience as he has worked in all departments and he can independently handle any section.

4. It is further contended that his work was satisfactory and customers also very much satisfied with the services rendered by him. Despite these facts without absorbing, the second party arbitrarily and illegally terminated his services. The said termination is against the provisions of I.D. Act, and the second party failed to take into consideration his continuous service of more than 3 years and working 240 days and more in each year.

5. It is his last straw that he hails from a very poor family and he has to look after his mother, 2 unmarried sisters and younger brother. Therefore it is his prayer that a direction to be given for his absorption as a clerk and pay all the arrears of salary and other consequential benefits.

6. The second party filed objections to this claim petition. Initially it is contended that the case of the first party is false, frivolous and vexatious. It is further contended that the averments of the first party that he was working as a clerk continuously from 1-4-89 to 31-7-92 is a false statement. However he has worked on temporary basis in the year 1991 from 15-4-91 to 12-6-91 amounting to 59 days. Again he rendered his service temporarily in the year 1992 from 15-2-92 to 12-4-92 amounting to 58 days.

7. It is further contended that the first party without permission or consent got his signature entered in the muster roll for the period from 15-4-91 to 31-5-91, 10-6-91 to 31-6-91, and again from 16-1-92 to 4-6-92. This entry has been falsely made in order to establish that he worked during the said period which is a fraud played by the first party. Even these facts are assumed he has not worked for more than 3 years as alleged by him.

8. It is further contended that the first party was taken purely on temporary basis and therefore there is no question of any termination. The second party maintained pay bill and monthly salary credited to the account of the second party to demonstrate that he worked as a temporary employee for 117 days in the year 1991 and 1992. He has no authority to sign in the muster roll and his conduct amounts to fraud which is very serious. Therefore the second party prayed for declaration that the termination is legal and justified.

9. A rejoinder was filed by the first party, reiterating some of the facts stated in the claim statement and others averments is that in various documents of the bank the first party has made his signature having worked in several branches and raised up a new contention that Sri S. S. Amasi has been issued charge sheet and suspended because the first party has been allowed to work continuously and therefore the charge sheet and the relevant papers are necessary to prove the continuity of service of the first party.

10. Since the point for adjudication was covered by the schedule this tribunal has not framed any separate issue and parties are directed to lead the evidence on schedule. The first party filed an application, IA No. 1, for the production of several documents in the custody of the second party. A counter affidavit by way of objection was filed by the second party. This tribunal passed an order and dismissed IA No. 1. The first party taken this matter before the High Court of Karnataka in W.P. No. 32867/94. This petition was decided on 7-12-94 where the Hon'ble High Court declined to interfere while exercising the powers under article 226 of the Constitution of India. But a liberty was given to the petitioner to raise all the grounds in the final order to be passed by this tribunal.

11. Since the second party to justify their action examined MW-1 Kulkarni who was working as an accountant from 1988 to 1992 and later promoted as Branch Manager in the same branch.

12. He has stated in his evidence that the first party as a temporary clerk worked from 15-4-91 to 12-6-91 and again from 15-2-92 to 12-4-92 the total number of working days was 59 and 58 is equal to 117 days. He has further stated that the first party as a temporary clerk was not entitled to sign the muster roll or enter his name.

13. The following documents are relied to justify the case of the second party; Ex. M1 a letter appointing him for 15 days. Ex. M2 is a second letter appointing for 32 days from 20-4-91 to 31-5-91. Ex. M3 and Ex. M4 are the muster roll register from 1-1-91 to 31-12-91 and 1-1-92 to 31-12-92. The first party has written his name at Sl. No. 8 in the month of January. (Ex. W3A) and again he has written his name marked as Ex. M36. He has also demonstrated in his evidence that the name of the first party was inserted in between the regular workman. He has again continued to do this work of interpolating the signature in the muster roll from 1-2-92 to 29-2-92 as per Ex. M4E. Again in the month of March he has signed the muster roll for the whole month. This tendency was continued upto 4-6-92 by this workman. This tendency was continued upto first party playing fraud. Ex. M5 a pass book of the first party and pay roll maintained in the bank conclusively shown that he has worked for 117 days only.

14. As against this evidence the first party has deposed that he was appointed as a clerk during April 1989 and worked till July 1992, during that period he worked in the S.B. account counter, Current Account Counter, and he wrote day books, loan section, deposit section and general ledger section, all these writing are in his hand writing and he has attested his signature. This writing was certified by the accountant and the manager.

15. He has further deposed that Ex. M4 and Ex. M2 the alleged appointment letters were not given to him. He further states that he was writing the names of the staff in the attendance register. In Ex. M3 he has written the names of the staff during May 1991, September 1991, in Ex. M4 he has written the names of the staff during the months

January, March, May, June and July, 1992. He has also written for the month of January, November and December, 1990.

16. It is his further evidence that during that period Shri S. S. Amasi was the branch manager. During June, 1992 there was a inspection and while verifying the records, the inspection officer obtained the information of the working period by him when he made a report that he has been working from April, 1989 it was held that my working is unauthorisedly and therefore I was removed from service during July 1992, my representation Ex. W2 dated 10-12-98 was not considered.

17. It is his further evidence that the second party was paying him some times Rs. 1000, some times Rs. 2000 and some times no payments regarding monthly salary.

18. I have gone through the answers elicited in the cross examination of MW-1. I do not find any material that will favour the case made out by the first party, except suggestions and denials.

19. In the cross-examination of the first party it is elicited the salary used to be credited to his account. But the witness has become wise to say that some times the salary used to be paid to him by cash. He has made to accept writing of his name in the muster roll in between 2 names of regular employees. It is consistent defence these interpolation was made colliding with the then branch manager Shri Amasi.

20. It is evident by the claim statement, oral evidence that the first party made an attempt to fish out the documents maintained in the bank to make out a case that his service was continuous one. He has made much of a letter Ex. W4 dated 14-10-92 a letter from Regional Office, Belgaum to Branch Manager, Belgalkot. It is stated in that letter that this branch engaged a clerk named A. S. Omkar (first party) on temporary basis for a very long period. It is further pointed out that the facts are not reported to this office for information/confirmation. Therefore the branch manager was advised to give details of this appointment and who had authorised this workman to work and the period he has worked. This letter was sent as a confidential. The first party produced Xerox Copy of this letter without giving any source as to how he came into possession of this letter. This obviously leads to the conclusion that he was colliding with Amasi to commit all these acts by taking advantage of his temporary appointment to do the job for some period.

21. It is consistent case of the second party that the temporary workers are not entitled to sign the muster roll. This fact is not denied by the first party. Therefore there is no impediment to hold that this workman went to the extent of inserting his name in the muster roll for 1991 and 1992 in some of the months. The materials placed by the second party is totally disproved of the first party working in the bank in the period he has signed in the muster roll by inserting his name in between the lines. It is also noticed that all the name of other bank staff are given at Sl. Nos. there is no Sl. No. to the name of this workman. This is a great fraud played by this workman. It is his fortune that criminal action was not initiated against him.

22. He states in his cross-examination that he is a B. Com. graduate and also working in schools and giving private tuitions in his house.

23. The second party have produced Ex. M1 and Ex. M2 a communication made by the Head Office to the branch manager dated 25-4-91 and 11-5-91 allowing to give temporary work to the first party for 15 days and 32 days respectively. Ex. M6 is pay bill for the month of April, May and June, 1991. The remuneration paid to this workman for having worked for some days is shown in the Bill.

24. The learned advocate for the first party, has mainly contended in his arguments that non-production of the various documents asked by the first party is a factor which defeated the case of the first party. The learned advocate has no say with regard to the interpolations made by the first party in the attendance register. Therefore the obvious conclusion is that deliberate fraud was played by the first party in collusion with Amasi. Therefore one cannot resort to take adverse inference for non-production of the documents. It is for the

first party who raised this dispute to prove on its own the contentions raised by him.

25. The case cited by the learned advocate for the first party AIR 1986 S.C. 132, H. D. Singh vs. R.B.I. The adverse inference was drawn by the S.C. When the bank failed to produce record when the contention of the workman that he has worked for more than 240 days after he has been selected for employment from daily wage service for some days during 1974 to 1976. Therefore this case is not applicable to the facts of this case.

26. In the result it is conclusively held that there is no question of termination of first party by the second party. Consequently the reference is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 3rd February, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का. प्र. 760.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया, नागपुर के प्रशासन के संबंध निधियों और उनके कर्मचारियों के बीच, नागपुर में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ है।

[स. एल.-12012/290/89-आई. प्रार. (सी.-I)]

सनातन, बैंक अधिकारी

New Delhi, the 18th February, 1999

S.O. 760.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India, Nagpur and their workman, which was received by the Central Government on 17-2-1999.

[No. L-12012/290/89-IR(B-I)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, MADHYA PRADESH, JABALPUR

Presiding Officer—Shri D. N. Dixit.

Case No. CGIT/LC(R)/30/90

State Bank of India,
Represented by Regional Manager,
Region No. II, Station Road, Nagpur. ... Management.

Versus

Shri Chandrashekhar, S/o Sadashiv

Gowardhan Nagar,
Tumsar,
Distt. Bhandara.

... Workman.
Occupation Nil, 0/N
Married about 38 years.

AWARD

Delivered on this 1st day of February, 1999

1. The Ministry of Labour, Government of India vide its Order No. L-12012/290/89-IR(B-3) dated 24-1-90 has referred the following dispute for adjudication by this tribunal—

“Whether the action of the management of State Bank of India, Nagpur in dismissing Shri C. S. Mahajani from service w.e.f. 9-2-86 is justified? If not, what relief, the workman is entitled to?”

2. According to Shri Chandrashekhar Mahajani the workman, he has joined the service of State Bank of India in August 1974. On 21-6-86, the charge sheet was served upon him alleging misconduct on his part. On receipt of the charge-sheet workman demanded documents to reply to the charges. This prayer was refused by the management. The workman then requested to allow inspection of documents with an advocate. In August 1987, the management gave inspection of some documents to workman. The enquiry was conducted. The Enquiry Officer found the workman guilty of the misconduct and on his recommendation, the disciplinary authority dismissed the workman from service from 9-2-86. The contention of the workman is that the charge sheet served upon him is illegal. Copies of documents were not supplied to him. The management arbitrarily declared the documents demanded by the workman as irrelevant. The workman wanted to take the help of a lawyer in the DE Proceedings. This prayer was refused by the DE Officer. This has greatly prejudiced the cause of workman. Many of the charges framed against the workman were more than 6 months old. The management cannot hold the Departmental enquiry after a lapse of 6 months of committing misconduct. The workman was suspended on 9-2-86. He was dismissed from service by order dated 16-9-88. Such retrospective dismissal is therefore illegal.

3. The further contention of the workman is during suspension period, he was not regularly paid the subsistence allowance. As a consequence, he could not get adequate legal assistance. The type of procedure adopted by enquiry officer during the course of enquiry was mala fide. The conduct of the Presenting Officer was also unfair. The management has engaged a handwriting expert. The report of the expert was not proved yet it has been used by the Enquiry Officer. The Enquiry Officer itself allowed certain questions in cross examination of management witnesses which has greatly put workman to handicap. The statement of Shri Gosai was recorded in English while this witness did not know this language. This procedure is highly irregular. The report of the Enquiry Officer is biased and not based on oral and documentary evidence. None of the charges levelled against the workman were proved. The principle of natural justice were not followed. The Enquiry is violated and order of dismissal is illegal. The punishment of dismissal is disproportionate. The workman prays for reinstatement and back wages and all consequential reliefs.

4. The contention of management, State Bank of India, Nagpur is that after the service of charge sheet on the workman at the request of workman inspection of documents was given to him. After receipt of reply from the workman, the DE was ordered and DE Officer was appointed. The workman was given copy of all the documents filed in the enquiry and demanded by him from time to time. The condition of service of workman is governed by Shastri Award and Desai Award. The workman has admitted certain misconducts vide his letters Exhibits M-11, M-12 and M-13. The charges framed against the workman were not complex. The services of an advocate was not allowed to the workman. The workman has put in about 12 years of service when he faced the departmental enquiry and was familiar with the procedure of the working of the Bank.

5. The Departmental Enquiry was ordered soon after the completion of the investigation. The management did not waste any time in starting the Departmental Enquiry. The workman has moved the labour court at Nagpur to decide the dispute about subsistence allowance during suspension period. This allowance has already been paid to the workman.

6. The entire record of the departmental enquiry has been filed which will show that workman was given full opportunity to defend himself. The punishment given to the workman is in proportion to the misconduct of the workman. The management has lost confidence in the workman. The activities of the workman has damaged the reputation of management in public eye. The workman has already been in gainful employment hence back wages are not required to be paid to the workman. The management prays that the action of the management be upheld and award be given in favour of the management.

7. Following charges were levelled against the workman :—

1. That you opened two different Saving Banks Accounts at two different branches, i.e. Kings Way (Nagpur Main) Branch and Dharampeth (Nagpur) Branch bearing No. C/242 and No. 4878 respectively in violation of instructions contained in Bombay LHD Circular No. PER/KCL/28 of 14-11-84. Your above act amounts to violation of lawful and reasonable orders of the management and as such is highly prejudicial to the interest of the Bank.
 2. That on 17-11-85, you induced the Bank to open a Saving Bank Account (N. 59/14787) at Gondia Branch in the fictitious name of one Shri Mukesh S/o Shri Ramaji Matey by introducing such person. Your such act is highly objectionable and prejudicial to the interest of the Bank as it exposes the Bank to serious risk of perpetration of fraud on the Bank.
 3. That on 4-1-86, a cheque bearing No. 006539 dated 3-1-86 for Rs. 19,700 drawn on Nagpur Main branch was tendered for collection and for credit of his account at Gondia Branch. The proceeds of the above cheque were credited to the account of said Shri Matey on 16-1-86 on the strength of an allegedly forged transfer responding advice dated 11-1-86 prepared in your handwriting and purported to have been sent by Nagpur Main Branch.
 4. That on 16-1-86, while officiating as a Passing Official, you had passed for payment one withdrawal again on 29-1-86, while officiating as a Teller you had made a payment of Rs. 2000 against a withdrawal purported to have been signed by Shri Matey. This amount (Rs. 2000) was also received by you by signing “M. R. Matgey” on the reverse of the said withdrawal.
- It is transpired that the transfer responding advice, dated 11-1-86 for Rs. 19,700 was neither issued by Nagpur Main Branch nor the branch had received the instructions in question from Gondia Branch. Thus, by perpetrating above fraud, you have tried to cause financial loss to the Bank to the tune of Rs. 17,800.
5. As per Banks laid down instructions, the first withdrawal that too of a large amount from a newly opened account (withdrawal of Rs. 15,000) should have been referred to the Accountant or the Branch Manager. Instead of doing so, you have gross negligently passed the withdrawal, in violation of the laid down instructions.
 6. That on 16-11-85, you issued a cheque bearing No. 504626 for Rs. 8500 drawn on your Savings Bank Account No. C/242 maintained at Nagpur Main Branch and tendered it for collection through Gondia Branch without sufficient balance in the above Savings Bank Account. The proceeds of the cheque were credited to your Savings Bank Account No. 6/14690 at Gondia on 21-11-85 on the strength of a transfer responding advice, dated 19-11-85 purported to have been sent by Nagpur Main Branch. The transfer entries pertaining to the above transaction were passed by you. Nagpur Branch has denied having issued any such transfer responding advice and it is evident that the transfer responding advice and the relative list of other originating credits were prepared by you in your own handwriting. Your such acts amount to defrauding the Bank and causing financial loss to the Bank to the tune of Rs. 8500. You had withdrawn a sum of Rs. 6000 on the 21st November, 1985 and the remaining amount was withdrawn by you subsequently.

7. That while working as a clerk typist inspection department, you frequently used to encash your cheques/ Savings Banks withdrawal to various branches drawn on Nagpur Main Branch and Dharampeth (Nagpur) Branch without maintaining sufficient balance in the concerned accounts. The particulars of such cheques/withdrawals are given below :

Sr. No.	D. D. Purchased at	Drawn on	Amount (Rs.)	Date of encashment
(A)	Tumsar	Nagpur	900/-	28-1-85
(B)	Tumsar	Dharampeth	750/-	1-3-85
(C)	Morena	Dharampeth	1000/-	9-4-85
(D)	Morena	Dharampeth	1000/-	May-85
(E)	Backbay	Nagpur	250/-	24-6-85

- (F) While working as a clerk typist at Gondia Branch you had tendered a cheque for Rs. 22,800 on 26-12-85 drawn on Nagpur Main Branch, without sufficient balance in your account. On 2-1-86, when the cheque was received at Nagpur Branch, the balance in your account was Rs. 52,95 only, the cheque was returned unpaid for want of funds in the account.

Your above acts amount to violation of the rules conduct and habitual mis-utilisation of facilities, and defrauding the Bank.

You are therefore hereby called upon to submit to us your explanation within seven days from the receipt of this charge sheet as to why suitable disciplinary action, including an action of dismissal from Bank's service should not be taken against you for having committed the above misconducts/frauds in terms of the provisions of paras 521 and 522 of the Shastry Award, and/or under the other provisions of relevant service rules applicable to pay.

8. On 19-5-95, this court passed order on validity of DE proceedings. This court found that the DE proceedings are proper, valid and legal. The workman has admitted certain facts in the documents filed by the management as Ex. M-11, M-12 and M-13. The workman has paid to the Bank the amount he has overdrawn on various occasions. Ex. M-11 is a letter written by the workman to branch manager, State Bank of Gondia dated 2-2-86. In this letter, the workman has written that he will make good in 4 days time Rs. 26,300. Ex. M-12 is the letter written by the workman on 25-2-85 to the Regional Manager, State Bank of India, Nagpur stating that he has purchased a DD of Rs. 900 from Tumsar. The workman has accepted his mistake and apologised. Ex. M-13 is a letter written by workman on 15-9-85 to the Regional Manager, State Bank of India, Nagpur stating that he had purchased DDs. The contents of these 3 letters makes it clear that the workman was guilty of the misconduct charged.

9. The report of the DE Officer is Ex. M-9. It is from page 203 to page 232 of copies of DE proceedings filed by the management. In this report, every charge has been taken separately and evidence of management and contention of workman has been discussed. It also mentions various documents produced by the management, their validity and the conclusion. The DE Officer has found the workman guilty of all 7 charges. The reasoning given by the DE Officer is logical and trustworthy.

10. The grievances of the workman is that he was denied the assistance of an advocate in the DE proceedings. The nature of charges which workman was facing was not complicated. At the time of enquiry workman has put in about 12 years of service in the Bank and he was familiar with the procedure and the working of the Bank in respect of withdrawal of money and overdrawn and other matters related in the charge. It does not seem that with the assistance of advocate, the workman could have done better to defend himself. The DE Officer was not an expert in the field of law. The knowledge of banking procedure of DE Officer and the workman was nearly of the same level. I do not agree that denial of services of an advocate has prejudiced the case of workman in the DE proceedings.

11. The management has filed the DE proceedings which are from pages 15 to 202 in the documents filed by the management. A study of these documents reveals that management witnesses has been thoroughly cross examined by the workman. Full opportunity was given to him to ask questions. Thus for the defence of the workman, full opportunity was given in cross examination.

12. The findings of the DE Officer were accepted by the disciplinary authority and were confirmed by the appellate authority. 3 officers of the Bank agreed that the workman has committed misconduct as narrated in the charge sheet.

13. The contention of the workman is that connected papers were sent to handwriting expert who gave his opinion yet this handwriting expert was not examined in the DE proceedings. It is the discretion of the management whom to examine before the DE Officer. The management can not be compelled to examine a particular witness as their own witness. If workman thought that evidence of the handwriting expert was necessary. He could have examined the handwriting expert as a defence witness. Thus non-examination of handwriting expert as a management witness will not effect the value of DE report.

14. The Honorable Supreme Court has held in the case of State of Mysore and Others versus Shivabasapu Shivappa reported in AIR 63 Supreme Court 375 that domestic tribunals exercising quasi-judicial functions are not court and therefore they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by direct rules of evidence. They can, unlike court, obtain all information a trial for the points under enquiry from all sources and through all channels without being fettered by rules and procedures which govern proceedings in court. Their only obligation which the law cause on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to use and give him a fair opportunity to explain it.

15. The Honourable Supreme Court in the case of management of Balipara Tea Estate versus its workmen reported in AIR 1960 Supreme Court 191 has laid down that in making award tribunal has only to be satisfied that the management is justified in coming to conclusion that charge against workman is well founded. Tribunal misdirects itself in insisting upon conclusive proof to guilt to be reduced by management in enquiry before it. Applying this test, I find that the management is justified in coming to the conclusion that charges against the workman are well founded.

16. The workman strongly emphasize that by order dated 9th September, 1998, he was dismissed with effect from 9-2-86. It has been argued that no employee can be dismissed retrospectively and such dismissal is unknown to law. The relinsh has been placed in the judgment of Assaram Raibhah Dhage versus Executive Engineer and others reported in 1990-1-LJ-48. The facts of this case are entirely different from the facts of the present case. The termination order Ex. M-10 dated 9-9-88 in para 13 speaks that the subsistence allowance etc. paid to the workman during the period of suspension shall not be recovered from him and he shall continue to draw subsistence allowance till the date of receipt of this order. In case he wish to prefer an appeal against this order, he can do so within the period of 45 days from the date of receipt of this order. The terminal benefits to which he shall be entitled will be according to the normal rules. Thus financially the workman has suffered no loss by retrospective termination of service. The workman can not point out any other loss he has suffered because of retrospective termination. In the cited case, the workman has suffered financial loss. The retrospective termination can be a irregularity but it is not illegality. The termination can not be declared as illegal simply because the services were terminated from retrospective effect.

17. On perusal of the statement of management witness and documents produced in the departmental enquiry, I fully agree that management has proved all the charges against the workman. The finding of the management that workman has committed misconduct is hereby approved.

18. According to workman, the extreme penalty of dismissal is unwarranted. The Bank deals in public money. The

honestly, security, confidence and integrity of the employees are the foundations of Banking business. This business will collapse if there is a shadow of doubt about the integrity of the employees. The workman is lacking in honesty, trust faith, integrity, confidence and security.

19. Honourable Supreme Court in the case of Union of India versus Pannananda reported in 1989 Supreme Court (I & S) 303 has held that ordinarily the tribunal should not interfere with punishment awarded by Competent Authority in departmental proceedings on the ground of penalty being excessive or disproportionate to the misconduct proved. If the punishment is based on evidence and is not arbitrary, mala fide or perverse.

20. In the pre-ent case, the workman has committed repeated misappropriations in different branches of the Bank and in various period. Looking to the misconduct proved against the workman, the penalty imposed on the workman is just and proper. The punishment is hereby confirmed.

21. The award is given in favour of the management. Parties to bear their own cost.

22. Copies of the award be sent to the Ministry of Labour, Government of India as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 761--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सस्कार कर्माटक बैंक लिमिटेड, बंगलौर के प्रबन्धन के संबद्ध निम्नोक्तों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एन-12012/281/91-आई.आर. (बी. 3-बी.1)]

समानता, डेस्क अधिकारी

New Delhi, the 18th February, 1999

S.O. 761.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Karnataka Bank Ltd. Mangalore and their workman, which was received by the Central Government on 17-2-1999.

[No. L-12012/281/91-IR (B-III/BI)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT BANGALORE

Dated 28th January, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 60/1991

I PARTY

Shri P. K. Kumara Swamy
S/o Kalyanappa C/o
C.M. Shivanna (Shri Kantu)
Channarayana, Hassan, Karnataka,
Hassan Post-573201.

II PARTY

The Assistant General Manager,
(HR&B) Karnataka Bank Ltd.
Regd. & Head Office, P.B. No.
716, Kodimbail, Mangalore-575003.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/281/91-IR.B. III dated 18-9-91 for adjudication on the following schedule

SCHEDULE

"Whether Shri P. K. Kumaraswamy was the workman of the Karnataka Bank Ltd. ? If so, whether the action of the management of Karnataka Bank Ltd. in terminating the services of Shri P. K. Kumaraswamy w.e.f. 20-4-1990 was justified ? If not, to what relief Shri Kumaraswamy is entitled to?"

2. The first party worked as a driver in a jeep bearing No. CTH 3676 w.e.f. 3-8-1988. His services were terminated w.e.f. 20-4-1990. Initially a consolidated salary of Rs. 400 was paid. Later it was enhanced to Rs. 750 per month. The jeep was provided to MW-1 C.R. Chandrashekara for the pilot project to credit delivery system in the Hassan District. The post of Development Officer was created in the year 1985.

3. The Registered Office and Head Office of second party bank gave the direction to the Manager, Hassan branch to purchase the jeep in question for the use of development officers under NABARD pilot Project from M/s. India Garage and made available to the Development Officer mainly for the purpose of supervising and monitoring the pilot project activities on top priority. This fact is evidenced from Ex. M-1 dated 16-12-87. At Sl. No. 7 a provision was made that the Development Officer is expected to drive the vehicle and if for any valid reason he is not in a position to drive the vehicle personally he can make suitable alternative arrangement by making allowance not exceeding Rs. 400 per month.

4. Accordingly, the first party workman was engaged by the Development Officer till he was discharged from service. Therefore it is the consistent case of the second party that the engagement of first party to work as a driver to the jeep in question is temporary arrangement made by the development officer and therefore there is no privity of contract between the first party and the bank. Since his engagement by the development officer is contractual in nature, for a limited period the first party is not entitled to claim any relief of reinstatement, back wages etc.

5. The case made out by the first party in his claim statement is that he gave an application dated 19-7-1988 to the branch manager, Hassan for the post of temporary driver and after calling for Bio-Data has been appointed and reported to duty on 3-8-1988. He has drawn salary through debit slips from the second party till he was terminated. He was regular in duties and therefore his termination is invalid under law and therefore there shall be a direction to take him on services with backwages.

6. Since the schedule to the point of dispute and the pleadings of the parties does not give any scope for framing additional issues, this tribunal has made an order on 14-7-1992 directing the parties to lead their evidence on the schedule to the reference and if any subsidiary point arose the same will be considered at the time of final arguments. Since the burden of proof was shifted on the first party, he has examined himself as VW-1 and closed the case. On behalf of the second party, the then development officer was examined as MW-1 and a witness as MW-2.

7. If we peruse the pleadings, oral and documentary evidence the factual antecedents being non-controversial, question of law will decide the case on its merits.

8. The contention of the first party that he was appointed on the basis of his application Ex. W-1 dated 19-7-1988 and his Bio-Data Ex. W-2 requires some examination. Both these documents is received by the branch manager as there is seal of the bank. In Ex. W-1 there is recommendation made by an Accountant, SBM, main branch, Ex. W-2 does not show the date but it looks like in the month of August. Since no appointment order was given to the first party in accordance with the appointment order issued by the second party, the specimen of which was produced as Ex. M-3, it can not be said that the second party bank appointed the first party as a driver pursuant to Ex. W-1 and Ex. W-2. It is substantially proved he has been appointed as a driver by MW-1 C.R. Chandra Shekara, a development officer for the purpose of driving the jeep which was specially sanctioned under NABARD Pilot Project.

9. The first party tried to make out a case that his appointment is by the second party bank and therefore he is entitled to statutory benefits conferred under the Act. He has made much of the fact, when this jeep involved in an accident. The police have filed a case in C. C. No. 1309/88 before Judicial Magistrate First Class at Sakaleshpur where the manager gave the evidence that the first party is the driver of the jeep No. 3676 at Hassan Branch. On a perusal of this evidence which is marked as Ex. W-8 what the manager stated was that the first party is a "HANGAMA" Driver that means a temporary driver. This fact has been evidenced not only in his statement but also in the evidence of the witness PW-6 who has also stated before the Magistrate that the first party was working as a temporary driver. This is borne out in Ex. W-9. Of course the first party was deputed along with the jeep for election work as disclosed in Ex. W-5 and Ex. W-6.

10. The first party has reiterated in his evidence what he has contended in the claim statement. In the cross examination of this witness he has stated that he has not received any appointment order pursuant to Ex. W1 and Ex. W2. He has also stated that there was no acquittance roll to take his signature in the bank. It is further elicited that since a driver was not required his services were terminated.

11. Against this witness MW-1 C. Chandrashekara has stated in his evidence under what circumstances the first party was engaged by him to drive the jeep in connection with pilot project and he use to pay the monthly salary debiting the same to the bank. He has also stated there is no post of drivers in the bank. He has further stated that after removal of first party the jeep was not been used at Hassan District as the project is closed. In the cross examination he has denied the suggestion that the bank has engaged the services of the first party and they were paying the salary. This driver also used to be sent to attend the repair works of the jeep.

12. MW-2 Shri N.A. Mohan corroborated the evidence of MW-1.

13. On these undisputed facts whether the first party is entitled for a relief claimed by him?

My answer to this question is in the negative for the following reasons.

14. It is undisputed that this jeep was purchased on priority under NABARD pilot project as evidenced in Ex. M-1. MW-1 was using the said jeep and the nature of work assigned to him is also narrated. As per SL No. 7 MW-1 shall drive the vehicle, if he is not in a position to drive for any valid reason the allowance for meeting expenditure will be given which was fixed initially at Rs. 400 per month. In SL No. 10 of Ex. M1 the other duty to use this jeep is also stated. A separate file to show the maintenance is directed in respect of this vehicle which is required to NABARD official whenever insisted. The remuneration of the first party from Rs. 400 to Rs. 750 was increased as per the communication Ex. M-2 w.e.f. 12th October, 1988.

15. The evidence stated above does not give rise to any presumption that the first party was appointed as a driver by the second party. The material discloses that the services of the first party was for driving the jeep as a temporary driver at fixed remuneration. The second party relied on

the judgements (1) 1994 (2) LLJ P. 792, a Judgement of the High Court of Calcutta in Standard Chartered Bank and Assistant Labour Commissioner (Central) & Ors. (2) M/s. Singer Sewing Machine Co. Vs. P.O. Labour Court, IV Kanpur and Others, 1998 LLR P. 813 of Allahabad High Court and (3) The Judgement of the Supreme Court between Employers in relation to Punjab National Bank and Ghulam Dastagir, 1978 (1) LLJ p. 312 S.C.

16. In Standard Chartered Bank's case, an employee of the bank had employed a driver and then dismissed him. The court held that admittedly, there was neither any letter of appointment nor termination order by the bank. The driver was employed by the employee of the Bank in his personal capacity and therefore no industrial dispute and the labour court has no jurisdiction to initiate any proceedings.

17. In M/s. Singer Sewing Machine Co. vs. P.O. Labour Court case, the Respondent No. 2 was not employed by the Singer Sewing Machine Co. and there was no control over the employee either on the terms and conditions of service and there was only reimbursement of salary to the respondent No. 2. On the prove facts the court came to the conclusion that the engagement of respondent No. 2 by the Regional Manager for driving the car provided to the Regional Manager will not bring the second respondent within the definition of the workman as defined by the Industrial disputes Act. The court held that "Even if a person is engaged by the employer in incidental operation relating to the industry, which now has assumed a complex situation, in that event he can not be denied the status of a workman on the ground that his work is not directly connected with the work of the industry. However the driver was not engaged in any of the incidental operations constituting the industry."

18. Having this in view the High Court has set aside the Award passed by the Labour Court for reinstatement with continuity and full backwages.

19. In Ghulam Dastagir case the Supreme Court having found that the Area Manager employed a driver to his vehicle paying the personal allowance received in this regard. On his termination a reference was made and the bank declares that the driver was its employee. Further the tribunal over ruled the banks objection and awarded reinstatement. The Supreme Court held that there is no nexus at all between the driver and the bank and the award has to be set aside.

20. The Supreme Court in Executive Engineer vs. K. Somasetty and Ors. AIR 1997 S.C. 2663 justified the discharge of daily wagers on closure of project for which they have been appointed.

21. Having regard to the settled law on this question the first party is not entitled for any relief. In fact very reference that the bank has terminated the services of the first party is no properly worded. In the result I make the following order.

ORDER

22. The first party is not entitled for any reliefs in view of the facts discussed above. He cannot become an employee of the bank as his services was temporarily used by the Development Officer and there is no privity of contract between the first party and the second party Bank.

23. Consequently the reference is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 28th January, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का. प्र. 762. ---पीछोशिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ इंडियन बैंक लिमिटेड शिबपुर के प्रबंधन के संबंध में निम्नलिखित आदेश उनके कर्मचारियों के बीच, प्रमुख

में निरिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पालघाट के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-2-99 को प्रान्ति हुआ था।

[सं. एल-12012/219/94-आई.आर. (बी-1)]

सनातन, डेस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 762.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Palakkad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Indian Bank Ltd., Trichur and their workman, which was received by the Central Government on 18-2-1999.

[No. L-12012/219/94-IR (B-I)]

SANATAN, Desk Officer.

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, PALAKKAD

Thursday the 28th January, 1999

PRESENT:

Sri B. Ranjit Kumar, Industrial Tribunal.

Industrial Dispute No. 12/95(C)

BETWEEN

The Chairman,

M/s. South Indian Bank Limited,

Head Office,

Trichur-680001.

(By Adv. M. Venugopalan)

AND

Shri V. A. Paul,

Vadakkethala, P.O. Pattikkad;

Mudicode,

Trichur District-680001.

(By Adv. Sreekumar Puthezath)

AWARD

The Government of India, Ministry of Labour as per order No. L-12012/219/94-IR (B. I) dated 27-1-96 referred the following issues for adjudication :—

“Whether the action of the management of M/s. The South Indian Bank Ltd. in dismissing Shri V. A. Paul from service is justified? If not, to what relief the workman is entitled?”

2. Disciplinary action was initiated against the workman, Sri V. A. Paul, who was working as Clerk-cum-Cashier in Pudukode branch of the South Indian Bank Limited by suspending him from service as per memo dated 16-4-92 and later

issuing charge sheet dated 5-8-92. The charges levelled against the workman are the following :—

- (1) that during the course of the cash verification made by the Inspection Officers at the commencement of the inspection of the branch on 13-4-1992 morning, a shortage of Rs. 15,000/- was found in the cash entrusted with him.
- (2) that when questioned as to how the shortage of cash has occurred he gave misleading/contradictory statements such as cash was paid to one Sri. Ali Ahamed who had promised to bring cheque drawn on his account with the branch for encashing/gold ornaments for pledging etc.
- (3) that about 11.30 A.M. he managed to get a cheque signed by Sri. M. A. Siddique who is having a CCOL account with the branch, through Sri. C. A. Vasu, sub staff of the branch to cover up the misdeed.
- (4) that after the departure of the inspecting officials he managed to obtain the signature of Sri. Ali Ahamed on the reverse of the cheque to make it appear that Sri. Ali Ahamed has received the proceeds of the cheque.
- (5) that he failed to produce for verification by Inspectors, the R. C. Book of the scooter bearing Registration No. 9422 which was purchased by him by availing a loan from the bank under scheme loans.
- (6) that he issued the following cheques in his account with Branch Pudukode without keeping sufficient fund in his account and thereby the said cheques were returned unpaid.

Sl. No.	Cheque No.	Amount
1.	0961737	188.80
2.	0969801	5,160.00
3.	0969803	8,120.00
4.	0965155	18,270.00
5.	0970659	5,000.00

Account Balance	Date of return
9.61	23-04-91
3.61	25-04-91
3.61	25-04-91
8.06	30-08-91
13.44	23-10-91

3 According to manazement, the aforesaid acts would amount to misappropriation of bank's funds, misrepresentation, tampering with bank

records, wilful disobedience of lawful and reasonable orders of the management, breach of rules of business of the bank and are also prejudicial to the interest of the bank.

4. The explanation submitted by the workman to the above charges was found to be unsatisfactory and a domestic enquiry was held into the charges. Though it is vaguely stated in the claim statement dated 1-6-96 filed by the workman that the domestic enquiry conducted by Sri. Jose Anto Nellissery is in gross violation of the principles of natural justice, the workman has not stated any circumstance that would support the above contention. The learned counsel for the workman has also not pointed out any such circumstances while arguing the matter. The only allegation raised against the Enquiry Officer is that he permitted several other persons to be present in the enquiry while witnesses were being examined. According to workman (WW1), while examining one witness, other witnesses were also allowed to attend and hear the proceedings. The Enquiry Officer who was examined before this Tribunal as MW1 has categorically denied the above allegation.

5. This is an enquiry in which the workman participated throughout with the assistance of a union-representative. If other persons were present during the course of examination of the witnesses, the workman or his representative should have raised objection at that time. A perusal of Ext. M1 enquiry file indicates that the witnesses were examined one by one and the workman or his representative had not pointed out any irregularity in the procedure followed by the Enquiry Officer in examining the witnesses.

6. The another grievance of the workman is that instead of the Manager of the branch, one Head Clerk who had animosity towards the workman was examined on the side of the management. It is well settled that in a domestic enquiry it is for the management to decide who are to be examined as their witnesses. If the Head Clerk was enemical to the workman, it is for the workman to prove that fact by cross-examining that witness in that regard and also by adducing some independent evidence. The workman had not done so in the present case. There is nothing on record to show that the Head Clerk who was examined in the enquiry was enemical to the workman.

7. In the circumstance, I hold that the above two contentions raised by the workman are untenable.

8. A perusal of Ext. M1 enquiry file clearly shows that the enquiry was held strictly in accordance with the principles of natural justice. The workman had been given ample opportunities to peruse the documents produced by the management in the enquiry. The four witnesses examined

on the side of the management were elaborately cross-examined by the workman. He had also adduced defence evidence by examining two witnesses. In the circumstance, I find that there is no procedural irregularity in conducting the domestic enquiry against the workman.

9. The workman has also challenged the correctness of the findings of the enquiry officer in his claim statement dated 1-6-96 and rejoinder dated 10-2-97. According to the written statement dated 5-10-96 filed by the management, the findings of the Enquiry Officer are on the basis of evidence recorded in the enquiry.

10. The charge Nos. 1-4 against the workman are regarding shortage of Rs. 15,000/- detected by the inspection officers on 13-4-92. The management has examined the concerned inspection officers in the domestic enquiry and the Head Clerk attached to the concerned branch. The workman has admitted the shortage of Rs. 15,000/- at the time of inspection. His contention in the claim statement is that there was a cheque for Rs. 15,000/- issued by one Mr. Siddique, the building owner of the bank and a very prospective customer of the branch. This cheque was brought by one Ali Ahamed, brother's son of said Siddique and since the seal was not affixed on the cheque, it was returned for affixing the seal and that since the party requested the amount very urgently, the amount was given with instruction to return the cheque immediately. According to workman, the cheque was returned immediately, but by that time inspection people came in the office at 10.15 a.m. and found that the cheque was not in the counter.

11. As per the cash scroll produced in the enquiry, the balance cash on 11-4-92 was Rs. 53,383.95, 12-4-92 appears to be holiday. The inspection team commenced the inspection on 13-4-92 at 10.15 a.m. and on verification of the cashier's cash book it was found that there were only six receipts for a total amount of Rs. 6604/- and there was no cash payment till that time. The inspection team found a shortage of Rs. 15,000/- in cash balance as per cash maintained by the branch manager.

12. The payment of Rs. 15,000/- against the cheque of Siddique is seen made at serial No. 17 in the debit column of cash scroll. This shows that the workman had parted Rs. 15,000/- without the knowledge of the branch manager. The cashier is expected to make payment against cheques only after the same is passed for payment by either by the branch manager or by other authorised officer. From the questions put by the workman to the management witnesses and also his explanation it is seen that he had admitted that he had done some favour for Siddique as he was a friendly or prospective customer of the bank and according to him this was in the interest

of the bank. I find it difficult to accept the above view of the workman in cash transactions. The fact that he had given contradictory versions regarding above transaction, when questioned by the inspection officials, also indicates that he had done same dishonesty act. On an overall appreciation of the evidence adduced in the domestic enquiry, it can be safely held that the workman is guilty of charge Nos. 1—4 in respect of transaction of Rs. 15,000 on 13-4-1992. In the circumstance, I fully concur with the finding of the enquiry officer on charge Nos. 1—4.

13. The enquiry officer has exonerated the workman from charge No. 5 and it is not necessary to examine the correctness of his findings on this charge.

14. The charge No. 6 against the workman is that he issued certain cheques in his account without keeping sufficient funds. The contention of the workman is that the cheques mentioned in the chargesheet were given to some of his friends for some immediate cash and the same was paid off even before the cheques were reached the bank for encashment. The management has produced the ledger sheets of S.B. Account No. 1700 in the name of the workman which shows that when the above cheques reached the bank for encashment, the balance amount available in his account was less than Rs. 14/- on every occasion. For example, when the cheque for Rs. 18,270 was returned on 30-8-91, the balance amount available in his account was only Rs. 8.06. From the documents produced by the management in the enquiry, it can be seen that the cheques were presented in the bank for payment and the contention of the workman that he had already paid off the amounts to the holders of the cheques before it reached the Bank is incorrect. Issuing cheques for exorbitant amounts without keeping sufficient funds in the account is not only a dishonesty act on the part of a bank employee but it also amounts to a criminal offence. There is ample evidence in the domestic enquiry to show that the workman is guilty of charge no. 6.

15. In the light of the aforesaid discussion, I find that the domestic enquiry held into the charges against the workman is legal and valid and the findings of the enquiry officer are also correct.

16. The next point is to be considered is whether the punishment of dismissal of service is proportionate to the gravity of the misconducts committed by the workman. The charges proved against the workman amount to the misconducts of misappropriation, misrepresentation and also tampering the bank records. The management in this case is a financial institution dealing with public money. There can be no doubt that the misconduct committed by the workman would tarnish the reputation of the management bank. The misconducts proved against the workman

would also amount to criminal offences. In the circumstance, I do not think that the punishment of dismissal meted out to the workman is excessive. Therefore, I am not inclined to interfere with the above punishment by invoking the provisions of Section 11-A of the I.D. Act.

17. In the circumstance, an award is passed holding that the action of the management of M/s. The South Indian Bank Ltd. in dismissing Sri. V. A. Paul from service is justified and he is not entitled to any relief.

Dated this the 28th day of January, 1999.

B. RANJIT KUMAR, Industrial Tribunal
Palakkad

APPENDIX

Witnesses examined on the side of Management.
MW1—Sri. Jose Anto Nelliserry.

MW2—Sri. Jose Anto Nelliserry.

Witnesses examined on the side of Workman.

Nil.

Documents marked on the side of Management.

Ext. M1—Enquiry file.

Ext. M1(a)—Enquiry notice dated 17-10-1992.

Ext. M2—Personal hearing notice dated 6-11-1993.

Ext. M2(a)—Postal acknowledgement card.

Documents marked on the side of Workman.

Nil.

नई दिल्ली, 19 फरवरी, 1999

का.घा. 763.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ इंडियन बैंक लिमिटेड, त्रिचुर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पालाकाड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-2-1999 को प्राप्त हुआ था।

[सं. एल-12012/92/95-आई.आर. (बी. I)]

सनानन, डस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 763.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Palakkad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Indian Bank Ltd., Trichur and their workman, which was received by the Central Government on 18-2-1999.

[No. L-12012/92/95-IR(B-I)]

SANATAN, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL
PALAKKAD

(Monday the 1st February, 1999/12th Magha, 1920)

PRESENT :

Shri B. Ranjit Kumar, Industrial Tribunal.
Industrial Dispute No. 70/96(C)

BETWEEN

The Chairman, The South Indian Bank Limited, H.O.
Mission Quarters, Trichur—680031.

(By Adv. Sreekumar Puthethalath)

AND

Shri E.I. Inasu, Elavanthungal House, Anjanpadi, P.O.
Aranattukara, Thrissur-680001.

(By Adv. M. Venugopalan)

AWARD

This Industrial Dispute has been referred to this Tribunal by Government of India, Ministry of Labour. The issues referred for adjudication as per Order No. L-12012 92/95-1(R(B.I.) dated 13-8-1996 are the following:—

"Whether the action of the management of South Indian Bank, Trichur is justified in dismissing Sri E.I. Inasu, Deputy with effect from 18-9-1992? If not, to what relief the concerned workman is entitled to?"

2. Sri E.I. Inasu was dismissed from service by way of punishment. According to his claim statement dated 27-1-1997, while he was working as a subordinate staff in the Thrissur main branch of the management bank, he was suspended from service vide memo dated 29-2-1992 without alleging any specific charges against him. Later another memo dated 12-3-1992 was served on him levelling the following charges:—

1. "that on 12-2-1992 he came to the premises of the old Head Office building of the bank in a state of drunkenness.
2. that on 12-2-1992 at about 2.30 p.m. he abused Sri Jose Thomas, Engineering Officer of Trichur Regional Office of the Bank, on the premises of Old Head Office building of the Bank."

3. The management conducted a domestic enquiry into the above charges. One Sri K. T. Antony, Chief Superintendent, Accounts Department of the management bank was the Enquiry Officer. Though the workman has vaguely stated in the claim statement that the domestic enquiry was in gross violation of the principles of natural justice and the Enquiry Officer was not impartial or independent, he has not adduced any evidence in support of the above allegations. According to the written statement dated 29-11-1997 of the management, the enquiry held was quite fair, proper and impartial complying with all the principles of law and natural justice.

4. The enquiry file was marked through the Enquiry Officer who was examined as MW1. He (MW1) has deposed before this Tribunal that he had conducted the domestic enquiry by giving all opportunities to the workman to cross-examine the management witnesses and also to adduce his defence evidence. A perusal of Ext. M1 and the evidence of MW1 shows that the workman participated in the enquiry throughout with the assistance of Sri P. J. Paul, the Treasurer of the South Indian Bank Employee's Association. Though an attempt has been made during the course of cross-examination of MW1 that all the witnesses were examined simultaneously, MW1 has categorically denied this allegation.

5. The further contention raised by the workman in his rejoinder dated 9-2-1998 is that the Enquiry Officer had never allowed to defend his case by putting relevant questions to the management witnesses during cross-examination. The workman has not made any attempt to prove this contention before this Tribunal. No question in this regard has

been put to MW1 when he was cross-examined. Therefore, I find that this contention is also untenable.

6. A perusal of the oral evidence of the Enquiry Officer as MW1 and Ext. M1 enquiry file clearly shows that the domestic enquiry held against the workman is strictly in accordance with the principles of natural justice.

7. The workman has further disputed the correctness of the findings of the Enquiry Officer. The star witness in the enquiry was Sri Jose Thomas. He has stated in the enquiry the details of the incident that took place on 12-2-1992. He had been elaborately cross-examined by the workman. However, the workman had not succeeded to discredit the statement of this witness which he had given in the chief-examination. Sri K. T. Antony, the Inspector of the management bank has also given evidence in the enquiry in support of the allegations against the workman. The evidence of other two witnesses examined in the enquiry as MW2 and MW3 do not support the allegations against the workman. In fact MW3 was declared as hostile. However, the evidence of Jose Thomas (MW1) and K. T. Antony (MW4) are sufficient to hold that the workman is guilty of the charges. It is now well settled that in a domestic enquiry it is not necessary to prove the charges beyond reasonable doubt as in criminal trial. Therefore, it cannot be held that in the absence of medical test or medical evidence the allegation regarding drunkenness was not proved against the workman. In the light of the evidence of MW1 and MW4 I hold that the findings of the enquiry officer are correct.

8. The next point to be considered is regarding the proportionality of punishment of dismissal meted out to the workman. The allegations proved against the workman would amount to the misconduct of drunkenness and indecent and disorderly behaviour on the premises of the management bank. At the time of committing the above misconducts on 12-2-1992, he was not on duty. Sri Jose Thomas (MW1) has stated in the enquiry that he had never seen the workman in such condition and he had not misbehaved to him in such a manner earlier. Even according to the management, he was under the influence of alcohol when he abused Jose Thomas. Therefore, it cannot be held that he had deliberately abused him. Jose Thomas has stated in the enquiry that the workman had no previous animosity towards him. Therefore, it is clear that the conduct of the workman on 12-2-1992 had no relation whatsoever with his employment under the management bank. However, being an employee of the bank he should not have come to the bank premises in a drunken condition during office hours and abused an officer of the bank. The conduct of the workman on 12-2-1992 would definitely affect the discipline and would amount to misconduct.

9. The management has no case that the workman had been proceeded against for committing any misconduct previously. This is the first time disciplinary action had been initiated against the workman and he had been straightaway dismissed from service. In my view, it is not at all proper to award the punishment of dismissal for the misconduct of the present nature without giving the workman an opportunity to improve. By any stretch of imagination, the extreme punishment of dismissal from service can be considered as a proper punishment for the above misconduct proved against the workman in this dispute. In similar circumstances, the Supreme Court has set aside the punishment of dismissal in *Ramakant Misra V/s. State of U.P.* 1983 SCC (L & S) 26 and *Ved Prakash Gupta V/s. Delton Cable (I) Ltd.*—1984 SCC (L & S) 281. Therefore, I feel that the punishment of dismissal meted out to the workman is liable to be set aside. At the same time, the workman cannot be left without any punishment for the misconduct committed by him.

10. The workman was dismissed from service in 1992. It was submitted by the learned counsel for the management that the workman has already settled his Provident Fund Account and other terminal dues. However, he has not produced any supporting documents. Such an averment is also not stated in the written statement. In my view, even assuming that the workman had settled his Provident Fund Account and other dues that cannot be considered as a ground for denying him the relief of reinstatement in service. Having regard to the above submission made by the

learned counsel for the management, the nature of misconduct committed by the workman, his age and other relevant circumstance, I feel that the ends of justice would be met if an award is passed directing the management to re-employ the workman in service without backwages, but with continuity of service from the date of dismissal. On re-employment his pay and allowances shall be fixed taking into account his service prior to the date of dismissal. However, the workman shall not be entitled to any other benefit for the service he had rendered prior to the date of dismissal.

11. The reference order is answered in the aforesaid terms and an award is passed accordingly.

Dated this the 1st day of February, 1999

B. RANJIT KUMAR, Industrial Tribunal

APPENDIX

Witnesses examined on the side of Management :

MW1—Sri K. T. Antony.

MW2—Sri Johny.

Witnesses examined on the side of Workman :

Nil.

Documents marked on the side of Management.

Ext. M1—Enquiry file.

Ext. M1(a)—Copy of enquiry notice dated 7-4-1992.

Ext. M2—Notice dated 25-7-1992 from Management to Workman.

Ext M2(a)—Postal acknowledgement card.

Documents marked on the side of Workman.

Nil.

नई दिल्ली, 15 फरवरी, 1999

का. नं. 764.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इम्यूनोलॉजिकल लिमिटेड के प्रबन्ध-तंत्र के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, नं. 2, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-99 को प्राप्त हुआ था।

[सं. एल.-42011/30/97-आईआर / (डी यू)]

के. वी. बी. उन्नी, अध्वर सचिव

New Delhi, the 15th February, 1999

S.O. 764.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, No-II, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Immunologicals Ltd., and their workman, which was received by the Central Government on 15-2-1999.

[No. I-42011/30/97-IR(DU)]

K. V. B. UNNY, Under Secy

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-II,
HYDERABAD

PRESENT :

Sri K.M. Nagabhushan Rao, B.A., B.L., Chairman.
Dated : 11th January, 1999

I.D. No. 45 of 1998

(CENTRAL)

BETWEEN

The General Secretary,
Indian Immunologicals Employees Union,
IEU, Rakshapuram,
Gachibowli,
Hyderabad-500019.

.. Petitioner.

AND

The General Manager,
Indian Immunologicals,
Rakshapuram,
Gachibowli,

Hyderabad-500019.

.. Respondent.

APPEARANCES :

Sri R. Sudhakar, Advocate, for Petitioner.

Sri A. Krishna Murthy, Advocate, for Respondent.

AWARD

This reference has been made by the Union Government U/s. 10(1)(d) of the I.D. Act, vide order No. L-42011/30/97, IR(DU), dated 11-06-1998, for adjudication of the following issues :

"Whether the action of the Management of Indian Immunologicals Limited in Awarding punishment of stoppage of increment for 1 year to Sri L.N. Ramachandran is justified?"

"If not, what the petitioner is entitled for?"

This dispute was espoused by the General Secretary Indian Immunological Employees Union.

Brief facts of the case are as follows :—

The workman L.N. Ramachandran is a Junior Technician in the Respondent Management and he was directed to go on tour to procure Liquid Nitrogen from the Factory of Fertilizer Corporation of India, Ramagundam and since the tour is first time in his entire career he was not aware of the procedures in transportation of the material nor he was well versed with the preparation of the bills, and therefore he relied on one Sri Shivaramakrishnaiah for preparation of the bills.

The Management detected illegal claim in the said bill therefore the workman was issued with a charge-sheet for having claimed excess tolgate payment and also payments made to Hamalies for the Loading of the liquid. These excess claims are termed as Misconduct falling under Clause 25(2); Fraud or Dishonesty in connection with Establishment business or property, (9) Commission of any act subversive to good behaviour and (31) falsification of records.

The workman submitted his explanation stating that the tour was first time in his service and therefore he was not aware of the procedure nor was acquainted with the procedure for the preparation of bills and that he relied on Shiva Ramakrishnaiah for the preparation of the bills and the workman admitted in his explanation to the first charge that the two duplicate bills for Rs. 9 each were erroneously included by the said Sivaramakrishnaiah and according to the workman the said Sivaramakrishnaiah included these duplicates for implicating him as he was a Scheduled Tribe's man. His explanation to the 2nd charge is that he actually paid Rs. 45 each to Hamalies and he obtained receipt for the said amount and therefore claims that he is innocent on that charge.

The workman filed a claim statement and most of the averments pertain to the impartiality of the irregular procedure adopted by the Enquiry Officer and the main crux of these averments is on principles of natural justice. His specific grievance is that the Enquiry Officer was an Advocate and the presenting officer was a Law Graduate therefore the refusal of his request to be represented by a legally trained person was against the principles of natural justice. On the other hand the Management filed a counter denying all the averments and stated that the workman attended the first day of the enquiry and boycotted, thereafter when his request for a legal assistance was rejected. The Management justified the rejection on the ground that the presenting officer was only a Law Graduate but not practicing Advocate and therefore the Management justifies conduct of the enquiry ex-parte.

In fact pursuant to the seriousness with which the petitioner challenged the procedure of the Enquiry the matter was posted for hearing on the validity of domestic enquiry and My Learned Predecessor by Order dated 17-11-1998 discussed all these aspects and come to the conclusion that the enquiry was not vitiated by any irregularity, accordingly the domestic enquiry was found to be valid. Therefore such of those contentions which pertain to the procedural irregularities as alleged by the workman becomes non justifiable material. The only question that remained to be adjudicated is conclusions arrived at by the enquiry officer and the quantum of punishment.

Six documents were marked on behalf of the workman and 7 documents were marked on behalf of the Management with consent.

DOCUMENTS FOR WORKMAN :

- Ex. W1 : 31-03-1995 : Chargesheet.
- Ex. W2 : 12-04-1995 : Explanation to chargesheet.
- Ex. W3 : 15-04-1995 : Enquiry Notice.
- Ex. W4 : 29-05-1995 : Letter to Enquiry Officer.
- Ex. W5 : 27-06-1995 : Letter to General Manager.
- Ex. W6 : — : T.A. Bill and Documents.

DOCUMENTS FOR MANAGEMENT :

- Ex. M1 : — : Enquiry proceedings against L. N. Ramachandran/Petitioner along with Exs. A1 to A8.
- Ex. M2 : — : Enquiry Report.
- Ex. M3 : 11-07-95 : Show Cause Notice.
- Ex. M4 : 17-07-95 : Reply to show cause notice, dated 11-07-1995.
- Ex. M5 : 24/26-7-95 : Show Cause Notice.
- Ex. M6 : 03/04-8-95 : Reply to Show Cause Notice.
- Ex. M7 : 21/23-8-95 : Punishment Order.

Heard both sides.

The T.A. bill was marked by the Enquiry Officer under Ex. A. 7 forming part of Ex. M1 in this case. The bill was accompanied by 11 receipts both original and duplicate so far Tolgate payments are concerned. Since it was the workman who produced them along with the bill no positive proof is required as to the origin of these bills. The workman filed a receipt dated 10-02-1995 said to have been given by the Hamalies showing receipt of Rs. 45 to each of the three Hamalies, this document was not marked. This receipt also shows payment of Rs. 25 to the Cleaner of the Lorry.

The Management examined two witnesses at the time of enquiry. The 1st witness verified with the factory authorities as to the mode of payment of the Hamali charges and with the Transport Contractor as to the practice of payment at Tolgate. According to their evidence the outside labourers were not allowed to handle the material and the factory

gives all the assistance in loading the material. The witness also verified with the Security Register for the relevant date in which it was shown that Driver & Cleaner with the Management representative i.e., the workman in this case were only allowed inside the premises on the day of loading. The other witness examined in the enquiry works in the production Department, and infact this department looks after the material and according to him the Management need not pay either at the Tolgate or to Hamalies. The evidence of these two witnesses remained unchallenged as the workman abstained from cross-examining them.

In his explanation to Charge No. 1 the plea of the workman was that he was new to the job and therefore he has dumped all the papers with him in the hands of Sivarama-krisanatah who prepared the bills. He admitted that two duplicates were erroneously shown for the claim. But there is no explanation from him as to how it came in to possession of these two duplicates. If these bills are scrutinised some unusual aspects surface. A pass bearing No. 29486 is the original showing the payment of Rs. 5 at Shamirpet check gate. A duplicate of the same bill show a payment of Rs. 9 for the same gate. Likewise there is a pass bearing No. 24293 showing the payment of Rs. 5 at Garden. And a duplicate of the same pass show the payment of Rs. 9 for the same gate, both the duplicates are filled with ink whereas the originals have printed figures. There is another pass in originals bearing No. 4004, the amount pertain to Manair Bridge, Karimnagar. This bill is dated 11th February, 1995. The original of Garden pass is dated 9-2-1995. From this it is clear that Rs. 9 is for to and from whereas Rs. 5 is for one side only. Therefore the duplicate showing the payment of Rs. 9 must be for both the sides and the originals showing payment of Rs. 5 in that view appears to be misleading. Moreover the workman coming into possession of both the original and duplicates is conspicuously not explained. Duplicates are not given to the vehicles but they are always retained at the check gates. They are not only important for the Contractors but also can be used as a record showing particulars of the vehicles passed through those gates on a particular day. Though the evidence of witnesses in the enquiry is hearsay in the absence of any explanation by the workman as to how he came into possession makes it abundantly clear that he intended to claim those payments. The receipt said to have been passed by the Hamalies peculiarly include the payment given to the Cleaner, the workman did not explain as to why he paid to the Cleaner Rs. 25. The figures of Rs. 45 also appears to be interpolated as the figure 4 appears to be inserted before 5.

The Learned Counsel for the workman argued that it was the duty of the Management to examine the Hamalies in order to disprove the explanation given by the workman can not hold water as their verification revealed with the Security gate at the factory that no one except the Driver Cleaner and workman were allowed into the premises of the factory on the relevant date. It is highly improper to insist for examination of a witness who is non-existent according to the records at the factory. For that matter no one prevented the workman either to examine the so called hamalies or the Tolgate person who handed over the duplicates to him. The Tolgate passes ex-facie show inconsistency and irregularity. The next point highlighted by the Learned Counsel for the workman is that the Management having not passed the bill should have stopped there without proceeding further, what the Learned Counsel tries to convince is that it is an irregularity because of his ignorance but not intentional nor fraudulent. This argument holds good, if this is a criminal trial. There is lot of material to entail the workman with benefit of doubt. But the domestic enquiry being a verification of facts, such benefit of doubt neither warranted nor deserved to be given especially when the workman got into possession of the duplicates over which he laid his claim. The procedure for claiming the bill may be new to the workman but the fact of claiming or for that matter possession of duplicate passes falls under rudiment knowledge of common man. A prudent man cannot escape by pleading ignorance of these aspects which circle round common sense.

The fact remained that the workman in his first opportunity has fumbled in claiming bill not supported by valid documentation. The responsibility was entirely on him. He failed to utilise his opportunity on the plea that he was not allowed to be represented by an Advocate. The Learned Counsel

cited two judgements. The 1st one deals with the aspect of opportunity given to a workman and the 2nd one deals with consideration of past record while imposing punishments. The decision reported in 1998 (2) LLN 372 of Punjab High Court is to the effect that Law does not recognise the right of the workman to avail the services of a Lawyer in a departmental enquiry merely because the enquiry is being conducted by a legally trained person and the workman can seek such assistance of Lawyer only if the department is represented by legally trained persons. This aspect is almost covered and finalised when this court held that the enquiry was valid. Even if that aspect is again considered what the High Court said is a legally trained person. A legally trained person is not a legally educated person, the word trained means a practising advocate, therefore the above aspect can not go to the route of the issue involved in this case. The 2nd case is from the Bombay High Court, reported 1998 (2) LLN 631. It must be remembered that past record no doubt as a general preposition should be looked into in all cases when severe punishments are proposed. The reported case is a case of dismissal. The Learned Counsel for the Management rightly argued that very lenient view has been taken by the Management by imposing stoppage of one increment for 1 year and as a matter of fact the Learned Counsel further argued that the said increment was already given to him and he was also promoted. From this it is clear that the stigma of punishment neither resulted in severe monetary loss nor promotional prospect of the watchman. The issue involved in this case is very trivial in nature. The stoppage of increment is as good as a fine. Even the Government employees are punishable with fine without enquiry under the service rules which is available, even after article 311 of the Constitution came into force. Moreover the workman throughout his pleadings, challenges the mode of enquiry but not appear to have been adversely effected by the quantum of punishment, under these circumstances. I hold that the management is justified in stopping one increment for 1 year of the workman and the workman is not therefore entitled to any relief.

The Award shall come into force under section 17 A of the I.D. Act after one month of the publication of the Award.

Dictated to the Typist, corrected by me, given under my hand and the seal of this Tribunal on this the 11th January, 1999.

K. M. NAGABHUSHAN RAO, Chairman

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

For Petitioner : —None—

For Respondent : —None—

DOCUMENTS MARKED BY CONSENT

For petitioner :

- Ex W1 : 31-03-1995 : Chargesheet.
- Ex. W2 : 12-04-1995 : Explanation to the Chargesheet.
- Ex. W3 : 15-04-1995 : Enquiry Notice.
- Ex. W4 : 29-05-1995 : Letter to enquiry officer.
- Ex. W5 : 27-06-1995 : Letter to General Manager.
- Ex. W6 : 21/23-8-1995 : Punishment Order.

For Respondent :

- Ex. M1 : Enquiry proceedings against L. N. Ramachandran/Petitioner alongwith Ex. A1 to A8.
- Ex. M2 : Enquiry Report.
- Ex. M3 : 11-07-1995 : Show Cause Notice.

Ex. M4 : 17-07-1995 : Reply to show cause notice to 11-07-1995.

Ex. W5 : 24/26-7-1995 : Show Cause Notice.

Ex. M6 : 03/04-8-1995 : Reply to show cause notice.

Ex M7 : 21/23-8-1995 : Punishment Order.

नई दिल्ली, 17 फरवरी, 1999

का. अ. 765.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. रिसर्च एंड एसेसमेंट सेंटर के प्रबन्धकों के संबंध नियोजकों और उनके फर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एल.-42012/50/98-आईआर (डी यू)]

के. वी. बी. उन्नी, अवर सचिव

New Delhi, the 17th February, 1999

S.O. 765.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Research & Assessment Centre and their workman, which was received by the Central Government on the 17th February, 1999.

[No. L-42012/50/98-IR(DU)]

K. V. B. UNNY, Under Secy.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 193/98

In the matter of dispute between :

Shri Amar Nath Shukla,
through The General Secretary,
Delhi Karamchari Sangh,
D-60(576), Chanderlok,
Gali No. 8, Durga Puri,
Shahdara, Delhi-110001.

Versus

M/s. Research & Assessment Centre,
R.A.C. Building, Lucknow Road,
Timarpur, New Delhi-110001.

APPEARANCES: None.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/50/98-IR(DU) dated 7th September, 1998 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of M/s. Research & Assessment Centre, New Delhi in terminating the services of Shri Amar Nath Shukla, Security Guard 4th October, 1997 is legal and justified? If not to what relief the concerned workman is entitled to?”

2. The matter was called many times but nobody was present. The workman had appeared on the first date of hearing and did not appear thereafter. Mr. Daryao Singh appeared for the workman. He did not file any document including the statement of claim. It appears that he was not interested in pursuing the dispute and No Dispute award is given in this case leaving the parties to bear their own costs.

Dated: 5th February, 1999.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 17 फरवरी, 1999

का. अ. 766—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वृत्तसंचार विभाग के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एल.-40012/136/91-आई आर (डीयू)]

के. वी. वी. उन्नी, अवर सचिव

New Delhi, the 17th February, 1999

S.O. 766.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of D/o Telecom and their workman, which was received by the Central Government on 17-2-99.

[No. L-40012/136/91-IR(DU)]

K.V.B. UNNY, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 42 of 1991

PARTIES :

Employers in relation to the management of Calcutta Telephones.

AND

Their workman

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. T. Chowdhury, Advocate.

On behalf of Workman : Mr. M. S. Dutta, Advocate.

State : West Bengal.

Industry : Telephone.

AWARD

By Order No. L-40012/136/91-IR(DU) dated 5-12-1991 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act 1947 referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Calcutta Telephones, Deptt. of Telecommunication, Taher Mansion, 8 Bentick Street, Calcutta in terminating the services of Shri Ram Chandra Mishra, casual workman, w.e.f. 1-1-89 is justified? If not, what relief the workman is entitled to?”

2. When the case is called out today, both the parties are represented by the learned Advocates. Mr. Dutta, learned Advocate for the workman submitted that he has no instruction from the workman and he wants to withdraw from the case.

3. It appears from the record that the concerned workman was examined in chief on 27-9-1993 but he could not produce himself for cross-examination till date inspite of several opportunities. Recorded examination in chief of the workman accordingly stands expunged. From the conduct of the workman it is clear that he is no longer interested in the case.

4. Mr. Chowdhury, learned Advocate for the management submitted that in the absence of any evidence of the workman in support of his case, management has nothing to answer and as such the management declines to examine any witness.

5. In the aforesaid circumstances, in the absence of any material on record for decision in respect of the schedule under reference, this Tribunal has no other alternative but to pass a "No Dispute" Award in the matter.

6. A "No Dispute" Award is accordingly passed. This is my Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

The 2nd February, 1999.

नई दिल्ली, 18 फरवरी, 1999

का.प्र. 767.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इन्स्टीट्यूट आफ हॉर्टिकल्चरल रिसर्च के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-2-99 को प्राप्त हुआ था।

[एल-42012/128/90-आई.आर. (डी. यू.)]

[एल-42012/105/91-आई.आर. (डी. यू.)]

के. बी. बी. उन्नी, धवर सचिव

New Delhi, the 18th February, 1999

S.O. 767.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Horticultural Research and their workman which was received by the Central Government on the 18-2-1999.

[No. L-12012/128/90-IR(DU)]

[No. L-42012/105/91-IR(DU)]

K.V.B UNNY, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 15th February, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C.R. No. 09/1991

I PARTY

Shri H. Anajanappa
S/o K. Hanumantharavappa
Iverakandapura,
Hesargatta Lake Post,
Bangalore North-560089.

II PARTY

The Director,
Indian Institute of Horticultural
Research, No. 25,

Palace Orchards,
Bangalore-560080.

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-42012/128/90-IR(DU) dated 18-2-1991 for adjudication on the following schedule.

SCHEDULE

"Whether the management of Indian Institute of Horticultural Research is justified in discontinuing the services of Shri H. Anjanappa, casual labourer, w.e.f. 4-5-84? If not to what relief the concerned workman is entitled to?"

C.R. No. 55/1992

I. PARTY

Shri N. Srinivas
S/o Shri Narayanappa
Henargatta Post
Billijaji,
Bangalore North TQ.
Bangalore-560088.

II PARTY

The Director,
Indian Institute of
Horticultural Research
No. 25, Upper palace Orchards
Bangalore-560080.

2. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-42012/105/91-IR(DU) dated 30-6-1992 for adjudication on the following schedule :

SCHEDULE

"Whether the action of the management of Indian Institution of Horticultural Research in terminating the services of Shri N. Srinivas, casual worker w.e.f. September, 1984 is justified? If not, what relief the workman concerned is entitled to?"

COMMON AWARD

3. The schedule to the first reference is the question of discontinuing the services of the concerned workman from 4-5-1984. The schedule to the second reference refers to termination of the workman w.e.f. September, 1984. In the first case the main ground urged by the first party is that from 4-5-1984 to 26-5-1984 he was sick and took treatment in the K. C. General Hospital, Bangalore. When he went to report for the duty on 7-7-1984 he has been prevented to attend the work.

4. The contention in C.R. No. 55/92 is that this workman also suffered from Typhoid on 10-9-1984 and after recovering from illness he has been reported for duty but he was not allowed.

5. The common contention of the second party in both disputes are that the concerned workmen were casual employee on daily wages and whenever there is work their services used to be utilised and work was intermitted and not a continuous one and therefore there is no question of rejecting their services nor there is any question of termination and violation of 25F.

6. In identical circumstances this tribunal rejected the references in C.R. No. 79/91, 80/91, 79/92 and 80/92 a detailed Order was made touching all the points raised by the parties and concluded that there was neither an Order of termination nor stopping the work of the concerned workman.

7. Following the reasons given in the earlier disputes cited above these references fail and the same are rejected. Keep a copy of the Award in C.R. No. 55/92.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 15 फरवरी, 1999

का. आ. 768 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोण्डली माइनिंग इण्डस्ट्रीज के प्रबन्धन के संबंध में निम्नलिखित आदेशों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-2-99 को प्राप्त हुआ था।

[सं. एल.-26012/22/95-आई. आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 15th February, 1999

S.O. 768.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kondli Mining Industries and their workman, which was received by the Central Government on 15-2-99.

[No. L-26012/22/95-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, BANGALORE

Dated, 29th January, 1999

PRESENT:

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 138/1997

I PARTY

Shri J. Rajoo,
Smith Road,
501, Near Employment
Exchange, Oorgaum Post,
K.G.F.-563120.

II PARTY

Shri B. R. Amarsingh,
Proprietor,
Kondli Mining Industries,
Kondli Village, Gubbi
Taluk, Tumkur-560079.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-260/22/95-IR(Misc.) dated 9-5-96 for adjudication on the following schedule:

SCHEDULE

"Whether Shri B. R. Amarsingh, Proprietor, Kondli Mining Industries is justified in terminating the services of Shri J. Rajoo Mines mate with effect from 31-7-1993 without any enquiry and notice? If not, what relief Shri Rajoo is entitled to and from which date?"

2. This reference is received on 9-5-96. A ordinary notice was issued fixing the hearing date as 8-10-97. Though the ordinary notice was served the parties have not appeared. The first party who has raised this dispute has not made any efforts to appear and file his claim statement. He has also not complied the mandatory provision of Rule 10(B) of the 651-GI/99—8

Industrial Disputes (Central) Rules, 1957, according to this he shall file a statement of claim with the tribunal within 15 days of the receipt of the order of reference.

3. However notices under RPAD were issued to both parties. The notice of the first party returned unserved as the party left the address. The acknowledgement of the second party has not returned so far. It clearly shows that the first party is not interested in the adjudication of this dispute. Therefore the reference is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 29th January, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का. आ. 768.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अस्पिनवाल कंपनी के प्रबंधन के संबंध में निम्नलिखित आदेशों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोच्चि के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-2-99 को प्राप्त हुआ था।

[सं. एल.-33012/4/95-आई. आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 769.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kochi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Aspinwall Company and their workman, which was received by the Central Government on the 19-2-1999.

[No. L-33012/4/95-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

(Wednesday, the 6th day of January, 1999)

PRESENT:

Shri D. Mohanarajan, B.Sc., L.L.B.,
Presiding Officer.

Industrial Dispute No. 38 of 1995(C)

BETWEEN

The Manager,
M/s. Aspinwall Company,
Wellington Island,
Cochin-3,

AND

The President,
Cochin Port Trust Thozhilali Union,
Door No. 24,
1652, Opp: Amonium Tank,
Cochin-3.

REPRESENTATIONS :

M/s. Menon & Pai,
Advocates,
Kochi-18. . . . For Management
Sri A. X. Varghese,
Advocate,
'Niyamavedi', 2/63,
Kochi-1. . . . For Union

AWARD

The Government of India as per order No. L-33012/4/95-IR(Misc.) dated 5-12-95 referred the following industrial dispute to this court for adjudication :

"Whether the action of the management of Aspinwall Company in not regularising the services of Shri M. S. Ajith is justified? If not, what are the benefits the workman entitled to?"

2. Pursuant to the notice issued from this court, both the parties entered appearance and submitted their respective pleadings.

3. When the case stood posted for evidence on 22-12-1998, the union did not turn up and prosecute the matter. But, this court was pleased to adjourn the case to 6-1-1999 to enable the union to pursue the dispute. Even one more opportunity was given, there was no representation on the part of the union when the case was called today the 6th January 1999. Neither the union nor the affected workman has cared to turn up and pursue the dispute. In the above circumstances, I am constrained to think that the union and the aggrieved workman are not at all interested to pursue the matter and that no industrial dispute is pending to be adjudicated upon.

In the result, the reference is answered holding that there is no subsisting industrial dispute between the parties to be adjudicated upon.

Dictated to the Confidential Assistant, transcribed and typed out by her, corrected by me and passed this award on the 6th day of January, 1999.

D. MOHANARAJAN, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का.आ. 770—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों

और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-2-99 को प्राप्त हुआ था।

[सं. एल-33012/3/92-आई. आर. (विविध)]
बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 19th February 1999

S.O. 770.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, to the industrial dispute between the employers in relation to the management of Madras Port Trust and their workman, which was received by the Central Government on 19-2-99.

[No. L-33012/3/92-IR(Misc.)]
B. M. DAVID, Desk Officer
ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, CHENNAI-104.

Tuesday, the 20th day of October, 1998

PRESENT :

Thiru S. Ashok Kumar. M.Sc., B.L.,
Industrial Tribunal.

Industrial Dispute No. 28 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Madras Port Trust, Madras)

BETWEEN :

The workman represented by
The General Secretary,
Madras Port Trust Employees' Union,
'S.C.C. Anthony Pillai Bhavan',
9, Second Line Beach,
Madras-600001.

AND

The Chairman,
Madras Port Trust,
Rajaji Salai,
Madras-600001.

REFERENCE :

Order No. L-33012/3/92-IR(Misc.), Ministry of Labour, dated 15-3-93, Govt. of India, New Delhi.

This disputes coming on for final hearing on Monday, the 14th day of September, 1998 upon perusing the reference, claim, counter statements and all other material papers on record, upon

hearing the arguments of Thiru R. Ganesan, Advocate appearing for the petitioner-union and of Thiru Arumugam & B. Haribabu, Advocate appearing for the respondent management and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of Madras Port Trust in imposing the punishment of reversion from the post of Attender to Peon on Shri R. Manickam justified ? If not, to what relief the workman is entitled ?"

2. The main averments found in the claim statement filed by the petitioner-union are as follows :

The petitioner-union is a trade union registered under the Trade Union Act. It represents the majority of the workmen employed in the Madras Port Trust. The union has been recognised by the Madras Port Trust. The dispute is in respect of punishment of reversion of workman Shri R. Manickam from the post of Attender to the post of Peon. Thiru R. Manickam is the member of the petitioner-union. Manickam was appointed as a peon for which post he was promoted as an attender under the Scheme of grouped promotions on completion of 8 years in the post of Peon. The workman was placed under suspension on 27-12-86 for an alleged act of disorderly behaviour with Shri Jayaraman, Senior Administrative Officer. A charge memo was issued to the workman stating that on 27-12-86, about 9.45 hrs, the workman entered the room of the Senior Administrative Officer (Establishment) shouting against him using vulgar, indecent words and also threatened violence against him. Explanation was submitted by workman denying the charges. Enquiry was conducted by the Superintending Engineer Shri K. Radhakrishnamurthy. In the enquiry seven prosecution witnesses and two defence witnesses were examined S/s. T. Ramachandran, Office Superintendent, R. Nagarajan, Assistant Superintendent, K. Ramakrishnan, Junior Assistant, Shri Jayaraman, Senior Administrative Officer (Establishment) were examined as witnesses to speak to the fact that worker had used abusive and threatening language against the Senior Administrative Officer (Establishment). The first three persons are directly under the control of the Senior Administrative Officer (Establishment). Shri T. Ramachandran is the Office Superintendent, who is expected to maintain the Cycle Tapal Register, but has not maintained the said register as per findings of the Enquiry Officer. The Junior Assistant Shri K. Ramakrishnan, is actually working under the direct control of the Senior Adminis-

trative Officer (Establishment). No body can expect that these persons would depose against the Senior Administrative Officer (Establishment), Attender Shri R. Manickam left the office on 20-12-86 without noting the time in the cycle tapal register. The Office Superintendent, complained about this to the Senior Administrative Officer (Establishment) who asked the Office Superintendent to send the attender to his office. The Senior Administrative Officer (Establishment) asked the attender why he did not enter the time in the Cycle Tapal Register or inform the office Superintendent when he left for which the attender replied that his mother was sick in the Madras Port Trust hospital and he went early. The workman was asked by the Senior Administrative Officer (Establishment) why he did not ask for permission of the Office Superintendent for which the attender replied, "Am I a thief. What are you thinking of me. I will see you when you come out." There was no practice at all to sign the Cycle Tapal Register or to note the time of taking the despatch. On 20-12-86 he attended to his duties as usual. On 27-12-86 the workman was asked by the Office Superintendent to see the Senior Administrative Officer (Establishment). When the worker went he was asked whether he attended and carried out the duties on 20-12-86. He further asked him that in the cycle tapal register his signature should have been obtained. The worker told him that it was not the practice. The senior administrative officer got wild and abused him in vulgar language. There upon complaint was made by the attender to the Chief Engineer, Madras Port Trust about the behaviour of Shri R. Jayaraman, Senior Administrative Officer. Some of the attenders/peons/jamadars also had signed this complaint. But later, they were forced by the officers to withdraw from the complaint and to say if they were compelled by the Attender Shri R. Manickam, to sign the complaint. An enquiry was conducted by the Enquiry Officer regarding the practice in the Port Trust that the time of taking Tapals on despatch was mentioned in the Cycle Tapal Register and whether the Cycle Tapal Register was signed by the officer. In the findings, it was held that there was no such practice at all and that cycle tapal register was not at all maintained. It was also found that the cycle tapal register was tampered with, obviously by persons who were in possession of it viz., the Office Superintendent and Senior Administrative Officer. There was no circular issued by Head Office in this connection. The Senior Administrative Officer has no authority to issue an office circular. In no other departments in the Port Trust, similar circular was issued and

there was no practice at all for any Attender/Peon to sign the cycle tapal register or to note the time of despatch. Once it was found that there was no practice at all for noting down the time of despatch in the cycle tapal register and getting the signatures of the officers in the Cycle Tapal Register the very basis of the charge against the workman goes. The entire allegation was fabricated against the worker with a view to protect the Senior Administrative Officer (Establishment) who abused the attender Sh. R. Manickam calling him by his caste name. To safeguard him against the complaint by the worker, the whole charges have been fabricated. The worker would not have abused the Senior Administrative Officer (Establishment) if he was merely asked why he did not get the permission before leaving the office to see his mother in the Madras Port Trust hospital, the findings of the Enquiry Officer that the charge was proved is perverse. The enquiry was also not fair and proper. The workman was examined at first and questioned elaborately about his case and defence. After that, the prosecution witnesses were examined. The questioning of the work, at the beginning of the enquiry was objected to by the representative of the workman. The procedure allowed has very much affected the defence of the workman and the same amounts to violation of the principles of natural justice. A copy of the sum-up and brief submitted by the Presenting Officer was not furnished to the workman and as such the workman was denied a reasonable opportunity to put forth the defence properly. A show cause notice was given and after a reply the Chief Engineer who is the Disciplinary Authority issued the order of punishment of reversion from the post of Attender to the post of Peon. This order was made in his proceedings dt. 2-5-88. As per the Circular issued by the Chairman dt. 17-11-81, the Authority competent to impose the punishment of reversion should make it clear in the order that the review of the case for re-promotion would be after two years of service after the date of reversion. But no period was mentioned. It was as if it was for an indefinite period. The workman was promoted as Attender, after three years of the order of reversion on 10-6-91. No review was made after two years of reversion as required. The workman preferred an appeal to the Chairman on 6-9-89, and there was no reply and hence a dispute was raised by the union. The punishment imposed is arbitrary and unjust. Though the enquiry was over in June 1987, enquiry officer submitted his report only on 9-12-87 after a long delay till which time the worker had to be under suspension. The entire charges are motivated. The officer concerned took efforts to pressurise the attenders, peons, Jamedars, to withdraw the complaint made against Shri Jayaraman. The petitioner prays to pass an award holding that the punishment of re-

version imposed on Manickam to the post of Peon from attender is unjustified and to award all consequential benefits to the workmen.

3. The main averments found in the counter statement are as follows :

Shri R. Manickam, Attender, Engineering Department was charge sheeted on 27-12-86 for his riotous and disorderly behaviour towards the Senior Administrative Officer (Establishment) of the Engineering Department during working hours on 27-12-86. The workman was placed under suspension since his behaviour was a misconduct punishable under Clause 42(c) (iv) of the Standing Orders for the Port of Madras. The charges framed against him are :

"that on 27-12-86 at about 9.45 hours the workman Attender entered the room of Senior Administrative Officer (E) and shouted against him using vulgar and indecent words and also threatened violence against him." A fair and proper enquiry was conducted against the charges framed against him. Based on the evidence recorded in the enquiry, the Enquiry Officer held that the charges framed against him were proved. Concurring with the findings of the Enquiry Officer, Shri R. Manickam was ordered to be reverted as peon w.e.f. 2-5-85 (FN) Until he is considered fit for restoration. The period of his suspension was also ordered to be reckoned as duty for pensionary benefits. Appeal was submitted by R. Manickam against the punishment of reversion and his appeal was rejected as he had not brought out any fresh points for reconsideration of his case. The order passed by the opposite party is valid in law and there is no infirmity in it. After opposite party's reversion, review was made twice in order to promote him, but the officer under whom he was posted to work has given remarks that his work and conduct are not satisfactory and hence his promotion was not considered. He was transferred another division and again a review was made and this time as his work was not satisfactory, in the review made, his case was considered and he was promoted by an order dated 10-6-91. Already the workman was promoted and hence the present dispute should be dismissed in limine. The enquiry was conducted in a fair manner by examining the prosecution and defence witnesses. The Office Superintendent has maintained the Cycle Tapal Register and it was also exhibited during the enquiry. The Opposite party could examine only the persons who actually witnessed the incident. The said persons had worked in the department and not under the direct control of Senior Administrative Officer as alleged. The persons who witnessed the incident gave their deposition true to their conscience and they were cross-examined by the worker. It is incorrect to state that there was no practice at all to sign the Cycle Tapal Register or to note the

time of taking the despatch. It is incorrect to state that the Senior Administrative Officer got wild and it is far from the truth. The Senior Administrative Officer who occupied a very responsible post did not act like that, but on the other hand the worker had only acted in riotous and disorderly manner and shouted against the Senior Administrative Officer using vulgar and indecent words and also threatened violence against the Senior Administrative Officer. It is not correct to state that he made out a complaint but later the attenders who signed the complaint were forced to withdraw it. It is only an after thought. A register was kept in the custody of Tapal Clerk in order to make entry in the book while taking and returning the tapal by the Cycle Tapal Peon/Attender. He has not entered the timing in the register or he should have informed the office Superintendent before he left the office which he failed to do so. The Senior Administrative Officer (E) has got the authority to issue circular on behalf of Heads of Department to follow the rules and to take action in case of failure by the staff. R. Manickam had failed to follow the rules when he was questioned by the Senior Administrative Officer (E) for which he misbehaved towards the Senior Administrative Officer. The worker is solely responsible for the case. When a subordinate employee commits any mistake, he should be questioned by his superiors to rectify the same. The intention of the Senior Administrative Officer was only to rectify the mistake, committed by Manickam and not to fabricate any false case against him. The charges framed against the worker have been proved in the enquiry. It is not correct to state that the version of the prosecution is unreal and untrustworthy findings of the enquiry officer are perverse. It is incorrect to state that the enquiry was not fair and proper. The questioning of the workmen at the beginning of the enquiry was objected to by the representative of the workman is not correct. The questions were put by Enquiry Officer by way of clarification in the first instance to the workman and this was not objected to either by the workman or his representative and therefore, it is only an after thought. As no objection was made in the enquiry, the question of violation of the principles of natural justice never arose. It is not correct to state that the workman was denied reasonable opportunity. A copy of the Enquiry Officer's report has been furnished to the workman and as such the workman was provided all reasonable opportunity. It is incorrect to state that no review was made after two years of reversion. After his reversion, review was made twice in order to promote him. When the workman was found satisfactory in his work and conduct, he was promoted as Attender in the subsequent review held. It is not correct to state that the order of punishment is not justified, it is arbitrary and unjust. There is no delay in conducting the enquiry. The enquiry was delayed on account of delaying tactics adopted by the worker and not by

the opposite party or the Enquiry Officer. It is incorrect to state that the officer concerned took efforts to pressurise the attenders/peons/jamedars to withdraw the complaint. There is no malafide. The worker is not entitled to any relief as the punishment of reversion imposed on him is based on the proved act of misconduct committed by him towards a Senior Officer under whom he was posted to work. The order of reversion was passed after taking into account all the facts and materials produced in the enquiry and based on the findings of the Enquiry Officer and the connected records. The reversion order is just and reasonable one. Enquiry conducted against workman is just, fair and reasonable and it is not vitiated in any manner. The findings of the Enquiry Officer is based on the materials produced in the enquiry. If Tribunal comes to the conclusion that the enquiry conducted against the workman is not fair and proper, findings is perverse, opportunity may be given to the opposite party to lead fresh evidence and documents to justify their action. Respondent prays to dismiss the claim.

5. On behalf of the petitioner Ex. W-1 to W-11 have been marked by consent. On behalf of the respondent management MW1 and MW2 have been examined and Ex. M. 1 to M. 15 have been marked.

6. The Point for consideration is : Whether the action of the management of Madras Port Trust in imposing the punishment of reversion of Thiru R. Manickam from the post of attender to peon is justified. If not, to what relief the workman is entitled to ?"

7. The Point : The workman Thiru R. Manickam was an attender employed in Madras Port Trust. On 27-12-86, Th. Jayaraman, Senior Administrative Officer made a complaint Ex. M. 4 about the disorderly behaviour of Thiru R. Manickam. On the same day, the said Manickam and six other attenders, peons of despatch section gave a counter complaint Ex. M. 1 to the Chief Engineer about the occurrence said to have taken place on same day at 9.30 a.m. making allegations against Senior Administrative Officer, that he used abusive words against the said Manickam. The same day, the said Manickam was placed under suspension w.e.f. afternoon and a memo was issued to him calling for his explanation. Subsequently the 4 peons and attenders, who signed Ex. M. 1 representation gave another statement denying their knowledge about the occurrence and the said statement is Ex. M. 2. On 19-1-87, the said Manickam denied the charges and requested permission to engage Thiru D. Purushothaman, Junior Assistant for his defence. Thiru Purushothaman also gave his consent on the same day as found from Ex. M. 7. Ex. M. 8 is a letter dt. 29-1-87 requesting Chief Engineer to permit him to engage Thiru Purushothaman, for which the respondent agreed by letter dated 7-2-87 which is marked as Ex. M. 7. Enquiry started on

5-3-87 in which initially the delinquent workman was examined in detail by the Enquiry Officer. On behalf of the management 8 witnesses were examined. On behalf of the workman 2 witnesses were examined. Enquiry proceedings were Ex. M. 11. Enquiry was over on 17-6-87 and the Enquiry Officer gave his findings Ex. M. 12 on 9-12-87, holding that the charges framed against the workman are held proved. Accepting the findings of the Enquiry Officer the management issued a second show cause notice Ex. M. 13 but no punishment was proposed in the second show cause notice Ex. M. 13. The workman has sent an explanation and after his explanation on 2-5-88 respondent management passed final order reverting him as peon from the post of attender w.e.f. forenoon of 2-5-88. The said final order is Ex. M. 14. By an order dated 10-6-91 Ex. M. 15 the workman was repromoted to the post of attender.

On 21-8-96, this Tribunal has passed an order directing the parties to avail their opportunity of letting in evidence since preliminary issue does not arise due to the fact that Sec. 11A is not applicable since there is neither discharge nor dismissal of the workman concerned. Thiru S. Ravikumar, who is a signatory in both Ex. M. 1 complaint against the Senior Administrative Officer as well as Ex. M. 2 denying knowledge of occurrence was examined as MW1, before this Tribunal. But later, he failed to appear for cross-examination and his evidence was eschewed on 24-4-97. Thiru D. Muthu, who was examined as MW1 and who earlier signed Ex. M. 1 and M. 2 has denied any knowledge about the alleged occurrence which is a charge against the workman. Thiru G. Veerasamy, Junior Accounts Officer who was examined as MW2, has stated that he does not know any thing about the occurrence. No other witness was examined on behalf of the management to prove the occurrence even though 8 witnesses were examined on behalf of the management during the domestic enquiry against the workman. A perusal of enquiry proceedings Ex. M. 11 would show that the enquiry has been conducted in a biased manner. During the cross-examination of the management witness when the co-worker cross-examined those witnesses, the Enquiry Officer has disallowed several questions regarding the nature of work, maintenance of records of like Cycle Tapal Register and also about the incident alleged to have happened on 27-12-86. In the domestic enquiry during the cross-examination of MW1, Thiru Jayaraman the Enquiry Officer has disallowed 15 questions asked by the defence representative. During the cross-examination of Thiru T. Ramachandran, MW2, the Enquiry Officer has disallowed 19 questions put by the defence representative. For most of the other questions, the said witness has either said "I do not know" or "may be". During the cross-examination of Thiru R. Nagarajan, MW3, three questions put forth by the defence representative were disallowed. When Thiru Venkatasubramanian, MW4

was examined during the cross-examination out of five questions put by him, the Enquiry Officer has disallowed 2 questions. When Thiru R. Vishwanathan, MW6, was cross-examined by the defence representative, he has disallowed seven questions. When MW7 Thiru Muthu was cross-examined he has disallowed four questions. When Thiru Ramakrishnan, a peon was examined as MW8, he has disallowed one question. When Thangavelu was examined as a defence witness, even during the Chief Examination, the Enquiry Officer has disallowed five questions put on behalf of the charge sheeted employee. Thus it could be seen that whenever the defence representative put some questions regarding the incident or Ex. M. 1 complaint or about the maintenance of cycle tapal register and the office procedure, for most of the vital questions, the Enquiry Officer has disallowed the same. The above behaviour of the Enquiry Officer shows his biased nature and therefore the enquiry has not been held in an unbiased manner.

7. Another important aspect which would prove that the enquiry has not been conducted in a fair and proper manner by observing the principles of natural justice is by the fact that at the very beginning of the enquiry, the Enquiry Officer has elaborately examined the charge sheeted employee and even went to the extent of cross-examining him. Before examining the charge sheeted employee, he was not informed that he will be examined first about the occurrence. In 1963 II LLJ P 397 ASSOCIATED CEMENT COMPANIES LTD., Vs. THEIR WORKMEN & ANR., the Hon'ble Apex Court has held as follows :

"It is further necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It is not fair that in domestic enquiry against industrial employees the employees should be, at the very commencement of the enquiry closely cross-examined, even before any evidence is led against him. In dealing with domestic enquiries held in such industrial matters the fact should be borne in mind that in a large majority of cases, employees are likely to be ignorant and so it is necessary not to expose them to the risk of cross-examination at the very commencement of the domestic enquiry."

In this case also the Enquiry Officer has examined delinquent employee in detail about the occurrence and has thus exposed his defence and therefore the whole enquiry is vitiated.

8. The same occurrence has taken place on 27-12-86 in which the Senior Administrative Officer

has given a complaint Ex. M. 4 alleging disorderly behaviour on the part of the charge sheeted employee and also about his threat. The same day, the delinquent employee along with six other peons/attenders has given a counter complaint Ex. M. 1 alleging that the Senior Administrative Officer Th. Jayaraman, abused the charge sheeted employee mentioning that he belongs to fisherman community which is a thieves community. While the management took action on Ex. M. 4, complaint of the officer no action was taken by the respondent management on Ex. M. 1 complaint of the charge sheeted employee and others. Subsequent to Ex. M. 1 the management has obtained another letter three days later on 30-12-86 in which Anbudoss, Dakshinamurthy, Muthu and T. S. Ravikumar who earlier signed Ex. M. 1 complaint have denied knowledge about the occurrence. The two witnesses who were examined on behalf of the respondent management before this Tribunal have denied any knowledge about the alleged occurrence. Therefore, the respondent management has failed to prove the misconduct alleged against the charge sheeted employee.

In the result, award passed holding that the action of the management in reverting Thiru Manickam from the post of attendant. Peon is not justified and therefore he is entitled to all benefits. No costs.

Dated, this the 20th day of October 1998.

S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-workman : Nil.

For Respondent management :

M.W. 1 : Thiru B. Muthu.

M.W. 2 : Thiru G. Veerasamy.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1/2-5-88 : Copy of the memo issued by respondent to the petitioner.

W-2/7-11-90 : Copy of the memo issued by the Chief Engineer.

W-3/10-6-91 : Copy of the memo issued by the Chief Engineer.

W-4/17-11-81 : Copy of the Circular No. Lr1/2568/81/5.

W-5/4-12-86 : Copy of the Circular No. EC2/28267/86E.

W-6/27-12-86 : Copy of the Memo & annexure regarding disorderly behaviour by R. Manickam.

W-7/5-3-87 : Copy of the Enquiry proceedings.

W-8/7-12-87 : Copy of the Enquiry officer's report.

W-9/25-10-88 : Copy of the memo issued by the Deputy Chairman.

W-10/ : Copy of the Extract from Procedure for imposing penalty.

W-11/31-10-91 : Copy of the memo issued by the Chief Engineer.

For Respondent-management :

Ex. M 1/27-12-86 : Letter by Manickam and other to Chief Engineer.

M. 2/30-12-86 : Representation from 6 workers.

M. 3/4-12-86 : Allocation of works.

M. 4/27-12-86 : Report of A.O (E) regarding disorderly behaviour of Petr.

M. 5/27-12-86 : Charge sheet.

M. 6/19-1-87 : Nomination of defence counsel.

M. 7/19-1-87 : Acceptance of defence counsel.

M.8/29-1-87 : Letter from petitioner P Manickam.

M. 9/7-2-87 : Letter by Chief Engineer to R. Manickam reg. enquiry with the charges framed.

M. 10/4-5-87 : Respondent's letter to petitioner.

M. 11/5-3-87 : Enquiry proceedings.

M. 12/9-12-87 : Enquiry report.

M. 13/21-12-87 : Final show cause notice.

M. 14/2-5-88 : Final order.

M. 15/10-6-91 : Repromotion to the post of attender.

नई दिल्ली, 19 फरवरी, 1999

का.आ. 771—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसूर मिटरल्स लि. के प्रबंधन के संबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-2-99 को प्राप्त हुआ था।

[सं. एल-29012/37/94-आई. आर. (विविध)]
बी.एस. डेविड, डैम्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 771.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal,

Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mysore Minerals Ltd., and their workman, which was received by the Central Government on the 19-2-1999.

[No. L-29012/37/94-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 21st January, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C.R. No. 15/1997

I PARTY

The General Secretary,
Mysore Minerals Ltd. Employees Union,
No. 29 M. G. Road,
Bangalore-1.

II PARTY

The Chairman Cum Mg. Director,
M/s. Mysore Minerals Ltd.,
M. G. Road,
Bangalore-1.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Dispute Act, 1947 has referred this dispute vide Order No. L-29012/37/94-IR (Misc.) dated 12-1-95 for adjudication on the following schedule.

SCHEDULE

“Whether the management of Mysore Minerals Ltd. is justified in denying promotion to Shri M. J. Moses ? If not, to what relief he is entitled to ?”.

2. A issue of notice, the first party filed claim statement on 17-12-97 and the second party filed their counter statement on 27-11-98. The pleadings submitted by both parties is necessary to reproduce in view of the facts that the matter does not require any adjudication on merits.

3. The second party filed a Memo on 21-1-99 enclosing self retirement scheme dated 27-10-98 and availment of this facility by the workman vide his application No 1234 dated 27-8-98. This documents-discloses that the second-party have paid a sum of Rs. 71,544/- as ex gratia and permitted to retire voluntarily.

4. In view of the above materials the reference does not require an adjudication on merits and therefore the same is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 21st January, 1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का.आ. 772—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 18 के अनुसरण में, केन्द्रीय सरकार मैसूर मिनेरल्स लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-2-99 को प्राप्त हुआ था।

[सं. एल-29012/19/95-आई.आर. (विधि)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 772.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Mysore Minerals Ltd., and their workman, which was received by the Central Government on the 19-2-1999.

[No. L-29012/19/95-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 28th January, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 62/1997

I PARTY

The General Secretary,
Mysore Minerals Ltd. Employees Union,
No. 39, M. G. Road,
Bangalore-1.

II PARTY

The Chairman & Mg. Director,
Mysore Minerals Limited,
No. 39, M. G. Road,
Bangalore-1.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-29012/19/95-IR(Misc) dated 20-7-95 for adjudication on the following schedule.

SCHEDULE

"Whether the Management of Mysore Minerals Ltd. is justified in treating the services of Shri Yenappa Kolli as resigned w.e.f. 25-10-91? If not, to what relief the workman is entitled to?"

2. The first party on whose insistence this reference was made has contended in his claim statement that he joined as a Casual labour on 9-9-82 to work at Niralakere Dolomite Mines, and he was illegally removed w.e.f. 9-11-82. He was again appointed as Casual labourer on 16-11-82 and once again his services has been terminated w.e.f. 8-12-82. Once again on his request he was appointed as a casual labour from 1-12-88 to work in Lime Stone Mines at Lokapur and then transferred to Niralakere Dolomite Mines w.e.f. 2-8-89 and he was brought on daily wages on regular basis w.e.f. 1-2-1991. According to him his services were continued till 25-10-91 and he was sent to work in the house of Estate Technical Director at Bangalore and worked for more than 2 years from 1993. As per the instruction of the Technical Director he once again went to Niralakere Mine but he was not allowed to work by saying that he has already tendered his resignation on 25-10-91. According to him that alleged resignation letter is fabricated one and therefore he is entitled for an order of reinstatement, continuity of service, back-wages and other consequential benefits.

3. The second party in their counter statement has contended that the union which espoused the cause of the workman is not registered trade union in the company and the workman is not the member of this union.

4. As it relates to the merits, it is the contention of the second party that his workman was appointed as Mazdoor at Neralakere Dolomite Mine on 9-9-82, on casual basis and terminated w.e.f. 9-11-82. He was again employed as Mazdoor on 16-11-82 and he resigned on his own accord w.e.f. 8-12-82. He had again joined the company at Lokapur Limestone Mine on 1-12-88 and left the company's service on his own accord w.e.f. 25-10-91 by tendering resignation.

5. The second party denied the other contention of the first party that his services were utilised in the Technical Director's Estate at Bangalore and Mainly contended that he was relieved from the

services from 25-10-91 on his resignation letter dated 1-10-1991.

6. Since the pleadings and the schedule to the reference had no scope for an additional issues the parties were directed to lead their evidence on the points specified in the schedule.

7. On behalf of the second party a law officer was examined as MW-1. He has stated that he is giving evidence on the basis of records and he has been authorised by the Managing Director to give the evidence. He has even stated that the workman was appointed on 9-9-82 and he was stopped to work from 9-11-82 as there was no work. He was once again taken to work on 16-11-82 and 8-12-82. The first party gave a resignation letter and stopped coming. Once again he was taken for work on 1-12-88 and on 25-10-91 he once again tendered his resignation which was accepted by the Head Office. He has denied the averments of the first party that he was worked in the Estate of Technical Director. He has made available the resignation letter Ex. WM(1), Form 'B' register as Ex. M-2 and the register of wages Ex. M-3.

8. In the cross examination this witness made to accept that he do not have any documents for having issued an appointment order on 9-9-1982 and also there is no document to show that the first party was appointed and a register was maintained for payment of wages. He is also made to state that there is no document to show that the first party tendered his resignation on 8-12-82. This evidence is totally insufficient to prove the burden placed on the second party.

9. Against this evidence the first party as reiterated the averments made in the claim statement. He has produced a xerox copy of the form 'B' register Ex. W1 for one period and contention that the thumb impression in Ex. W-3 is not made by him and also thumb impression in Ex. W-4 in Form 'B' register, to work from 2-8-89.

10. To evidence that he was working in the Estate of Technical Director he has produced the delivery notes where he was named to shift the articles required to make use in the Estate was sent from Bagalkot through a lorry Ex. W-5 to W-7 are produced in this regard.

11. Ex. W-1 is the extract of the register of employees engaged in the Mines which shows that the first party was taken as a workman on casual basis on 9-9-82. Ex. W-2 shows the same status but having taken for duty on 16-11-82 and there is an endorsement that he has left the service w.e.f. 8-12-82. Ex. W-3 is other extract with same status having worked from 1-12-88 to 1-8-89 and transferred to other mine. Ex. W-4 is other extract having worked from 2-8-89 and resigned w.e.f. 25-10-91. The documents of management consisted of Ex. M-1 resignation letter, Ex. M-2 register of employees and Ex. M-2 register of wages.

12. A file containing some correspondence in connection with this workman was produced by the second party. A letter of an alleged resignation, one of the paper in this file was marked as Ex. M-1. This is a typed letter where the first party tenders his resignation due to domestic problems and also to look after his agricultural work and requested the company to pay him what ever the benefit he is entitled.

13. By looking at this letter, Ex. M-1 cannot infer that it is a got up document for the purpose of depriving this workman. In the register the particulars contained of this workman is marked as Ex. M-2. This is marked by the second party only to show that this workman Venkappa Kolli was putting his LTM. The workman to dispute this LTM factor has placed reliance on Ex. W-1 and Ex. W-3, where his signatures are found at column number 17. According to the claim statement he has raised the dispute before the Regional Labour Commissioner (Central) but no date is given. The reference is dated 20-7-95. Both the parties have not placed necessary materials to appreciate the contentions raised by them. The first party is represented by the General Secretary, the second party has not engaged any advocate but one Law Officer represented him and gave evidence on the records maintained in the company. The concerned manager who has received this resignation letter is not examined nor there is any material to show why the said manager was not examined. Though it is open to accept hear-say evidence in some circumstances before the quasi judicial authorities, but it should satisfy the Judicial conscience.

14. The second party who are the masters of the show are expected to place materials to prove under what circumstances the resignation was accepted and what remuneration was paid to him. If any remuneration is paid there shall be an acknowledgement either for paying cash or by cheque. One of the letter in the file now marked as court exhibit as Ex. C1 discloses that this workman appointed on 1-12-81 and he was regularised in the daily rated scale from 1-2-91 and therefore their evidence shows that he has worked for 2 years 2 months continuously. It is also not disputed that his services came to an end on 25-10-91, and therefore there is continuity of service of this workman which is more than 240 days in a given year. Since the first party disputed the allegation of resignation the second party shall prove this point to the satisfaction of the tribunal by placing materials and also by examining the person who has received the said resignation and acted on it.

15. All these materials shows that the discharge of the workman on the basis of alleged resignation dated 1-10-91 is not proved. The second party has taken a casual manner to prove the burden placed on them. Consequent to this materials there is no impediment to come to the conclusion that the

alleged resignation letter Ex. M1 does not satisfy the judicial conscience. Therefore the claim of the first party required to be accepted.

16. If once we come to the conclusion that resignation is not proved, then the removal of the workman amounts to retrenchment. If an workman is to be retrenched the provisions contained in Sec. 25F (1) & (2) shall be satisfied. In the absence of such materials, the workman bound to be reinstated.

17. Since the second party failed to discharge the burden placed against them, this reference is liable to be succeeded. The second party is also not produced any materials that the mines undertaken at Bijapur District were closed subsequently. Therefore there is no impediment to draw a conclusion that to get rid of this workman such method is adopted by the second party.

18. In the result this claim petition is allowed. The second party is directed to provide employment to the first party as a regularised workman immediately with continuity of service. With regard to loss of job from 25-10-1991 till his reinstatement a sum of Rs. 25,000/- is ordered to be paid to the workman, as compensation towards backwages. Though the computation of earned salary for this period is much more than what is now ordered to be paid the circumstances of the case warrants that Rs. 25,000/- is Just.

19. This reference is answered accordingly.

(Dictated to the stenographer, transcribed by her corrected and signed by me on 28th January, 1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का.आ. 773—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कर्मचारी राज्य बीमा निगम के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-2-99 को प्राप्त हुआ था।

[सं. एन-15012/7/87-डो-III(बी)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 773.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Employees State Insurance

Corporation and their workman, which was received by the Central Government on 19-2-99.

[No. L-15012/7/87-D-III(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, MADHYA PRADESH, JABALPUR

PRESENT :

Shri D. N. Dixit, Presiding Officer.

Case No. CGIT/LC(R)(33)/89

BETWEEN :

Kanhaiyalal, S/o Gopal Purohit,
115 Rajaswa Gram Colony,
Chatribagh,
Indore (M.P.) .. Workman

AND

Regional Director,
State Employees Corporation,
Indore (M.P.) .. Management

AWARD

Delivered on this 15th day of January, 1999

1. The Ministry of Labour, Government of India by Order No. L-15012/7/87-D. III(B) dated 6-2-99 has referred the following dispute for adjudication by this tribunal :

“Whether action of the Management of Employees’ State Insurance Corporation, M.P. Region Indore in terminating the services of Shri Kanhaiya Lal Purohit, Peon in the office of the Corporation at Raigarh w.e.f. 19-9-86 is justified. If not to what relief the workman is entitled.”

2. According to the workman, he was appointed as peon by the management on 21-2-84. His services were terminated on 10-9-86. He was not given a notice for termination of service and was not paid compensation for retrenchment. Before termination, he has worked for more than 240 days in one year. The workman was holding the post which is of a permanent nature and after his retrenchment other employee has been appointed to do the work. Employees junior to the present workman are still working in the office of the management. In the new recruitment workman has not been given preference by the management. The workman wants that his termination be declared as illegal and he be paid wages and allow-

ances from the date of termination till the date of rejoining the service.

3. According to the management, the workman was employed on adhoc basis. He was employed because the regularly appointed peon was promoted as Lower Division Clerk. This employee could not pass the competitive test of LDC and was reverted back as peon. Because of this, the workman was removed. The workman was given appointment for short periods and his services came to an end with the expiry of this period. The workman was given job whenever it was available. It was not necessary to give workman notice before termination of service. There was no need to pay retrenchment compensation. The workman never worked continuously for 240 days in any year. The management wants the services of workman to be recognised as purely temporary and for fixed time. The management prays that the case of workman be dismissed with costs.

4. Shri K. D. Das filed his affidavit on behalf of the management and he was cross examined. He has stated in para-2 that workman worked at Raigarh, Nagda and Bhopal from 21-2-84 to 19-9-86. Each time he was appointed for a period less than 3 months. The gap between the 2 services is 2 to 4 days each time. As against this, in the statement of claim in para-2, it has been stated by the management that a peon has been promoted as Lower Division Clerk and in his vacancy, the workman was appointed. This another employee could not pass the competitive test hence he was reverted and the workman has to be removed to adjust this employee. It is clear that the present workman was working on a permanent post. The breaks in his service are artificial and has been resorted to deprive the workman from claiming a permanent status. I find that from 21-2-84 to 19-9-86, the workman has worked in a permanent post continuously.

5. In cross examination, Shri K.D. Das has admitted that only permanent employees are transferred from one place to another in the service of management. The workman has been transferred from Raigarh to Nagda from Nagda to Bhopal and again from Bhopal to Raigarh. This fact also supports the contention of the workman that he was working in a permanent post.

6. The workman was given regular pay scale. If workman would have been appointed in adhoc basis, he would not have been given regular pay scale of the post. This also supports the contention of the workman.

7. Applicant has worked continuously for more than 240 days in one year. He has not given notice of termination. He was not been paid retrenchment compensation at the time his services came to an end.

8. The result of above discussion is that the order of termination of the workman is illegal and is hereby set aside. The workman be again given his old job within a month from the date of publication of the award in the gazette of India. The workman be paid salary and allowances from 19-9-86 up to date within 3 months from publication of the award. If this is not done then on this amount, interest of Rs. 12 per cent per annum be further paid to workman. The award is given in favour of the workman Shri Kanhaiyalal.

Parties to bear their own cost.

Copies of the award be sent to Ministry of Labour as per rules.

D. N. DIXIT, Presiding Officer

नई दिल्ली, 18 फरवरी, 1999

का.आ. 774:—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना सं. का.आ. 1727 दिनांक 12 अगस्त, 1998 द्वारा लिक्वोरिटी पेपर मिल होशंगाबाद को उक्त अधिनियम के प्रयोजनों के लिए 10 सितम्बर, 1998 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (vi) के परन्तुक द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 10 मार्च, 1999 से छः मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[का. सं. एस.-11017/16/97-आई.आर. (पी. एल.)]

एच. सी. गुप्ता, अवसर सचिव

New Delhi, the 18th February, 1999

O. 774.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 1727 dated the 12th August, 1998 Security Paper Mill, Hoshangabad to be a public utility service for the purpose of the said Act, for a period of six months from the 10th September, 1998.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2

of the Industrial Dispute Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 10th March, 1999.

[F. No S-11017/16/97-IR(PL)]

H.C. GUPTA, Under Secy.

नई दिल्ली, 18 फरवरी, 1999

का.आ. 775:—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का.आ. 1726 दिनांक 12 अगस्त, 1998 द्वारा नाभकीय ईंधन और संघटक भारी पानी और संबद्ध रसायन तथा आणविक उर्जा को उक्त अधिनियम के प्रयोजनों के लिए 26 अगस्त, 1998 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था,

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है,

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (vi) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 26 फरवरी, 1999 से छः मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं. एस-11017/3/97-आई.आर. (पी. एल.)]

एच. सी. गुप्ता, अवसर सचिव

New Delhi, the 18th February, 1999

S.O. 775.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provisions of sub-clause (vi) of the clause (n) of section 2 of the Industrial Dispute Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. No. 1726 dated the 12th August, 1998 Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals and Atomic Energy to be a public utility service for the purpose of the said Act, for a period of six months from the 26th August, 1998.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Dispute Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 26th February, 1999.

[F. No. S-11017/3/97-IR(PL)]

H.C. GUPTA, Under Secy.

नई दिल्ली, 18 फरवरी, 1999

का.आ. 776:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.टी.एच. के प्रबंधन के संबंध

नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2 (धनबाद) के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-12-99 को प्राप्त हुआ था।

[सं. एल-20012/(303)/90-आईआर(सी-1)]

श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 776.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Dhanbad-2 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 16-12-99.

[No. L-20012/(303)/90-IR(C-I)]

S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 66 of 1991

PARTIES :

Employers in relation to the management of Bera Colliery of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar INDUSTRY : Coal
Dated, Dhanbad, the 9th February, 1999

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(303)/90-I.R.(Coal-I), dated, the 21st March, 1991.

SCHEDULE

"Whether the demand of the Union for grant of extension of service to Shri Basudeb Poddar—ex-storekeeper of Bera Colliery

under Bastacolla Area of M/s. BCCL by two years after his date of retirement w.e.f. 3-6-88 is justified? If so, what relief the workman is entitled to?"

2. In this reference both the parties appeared and filed their respective W.S. documents etc. Subsequently at the stage of oral evidence both the parties abstained from taking any steps in spite of the issuance of notice to them again and again leading to an inference that they are not interested to proceed further with this dispute. Under the circumstances, this Tribunal has been left with no other alternative but to pass a 'No dispute' Award in this reference. Accordingly a 'No dispute' Award is being rendered and the reference is disposed on 'No dispute' Award basis.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का.आ. 777—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मूम्बई सं. 1 के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. एल-22012/318/एक/93-आईआर(सी-2)]

वी.के. राजन, डेस्क अधिकारी

New Delhi, the 19th February, 1999

S.O. 777.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Mumbai No. 1 as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 17-2-99.

[No. L-22012/318/F/93-IR(C-II)]

V. K. RAJAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI
PRESENT :

Shri Justice C. V. Govardham,

Presiding Officer

REFERENCE NO. CGIT-94 OF 1993

PARTIES :

Employers in relation to the management of Food Corporation of India

AND

Their Workmen.

APPEARANCES :

For the Management : Mr. Sarfare.

For the Workmen : Mr. Anchan, Advocate.
State : Maharashtra.

Mumbai, dated the 4th day of February, 1999

AWARD

1. The Central Government by its order date 16-12-93 has referred the following dispute between the Management of Food Corporation of India and their workmen for adjudication by this Tribunal.

"Whether the action of the management of Food Corporation of India in changing the working hours of FCI Employees working at Panvel Depot from 0830-1700 hrs. to 830-1600 hrs. without issuing any notice as required under Sec. 9A of the I.D. Act is legal and justified ? If not, what relief the concerned workmen are entitled to ?"

2. The workmen in their statement of claim contends as follows :

The Management by a notice of change dated 4-6-91 proposed to change timings of the staff from 10.00 A.M. to 5.00 P.M. with lunch break of half an hour from 1.00 P.M. to 1.30 P.M., to 8.30 A.M. to 4.00 P.M. with lunch break of one hour from 12.00 Noon to 1.00 P.M. The Association by its letter dt. 20-6-91 objected to the said proposed change.

The Regional Labour Commissioner (C) seized the dispute in conciliation. The management by its letter dt. 18-6-91 declared that they have signed the settlement with Labour Union to departmentalise the labour of Panvel and stated that the staff attached to this depot are required to work from 8.30 A.M. to 5.30 P.M. with lunch break of one hour to 12.00 Noon to 1.00 P.M. An understanding was reached between the Association and Management before the Conciliation Officer. The management did not implement the proposed change of timing and status quo was maintained; but the management by its letter dated 16-7-92 withdrew the letter dt. 18-7-91. It has unilaterally withdrew the understanding reached before the Assistant Labour Commissioner. The Depot in-charge acting on behalf of the management changed the timings as 8.30 A.M. to 4.00 P.M. with one hour lunch break of 12.00 Noon to 1.00 P.M. w.e.f. 20th July, 1992. This unilateral change was challenged by the Association. The dispute was seized in conciliation when the A.L.C.(C) Bombay

sent his failure report to the Government. Therefore, the reference. The action of the management in changing the working hours without issuing a notice to change under Section 9-A of the I.D. Act is illegal and void. If this is not stopped the management will be changing the service conditions of the employees without complying, the requirements of law. Hence the Association prays for restoration of timings as before from 8.30 A.M. to 5.30 P.M. with one hour lunch break from 12.00 Noon to 1.00 P.M.

3. The Management in their written statement contends as follows :

The reference is misconceived and not maintainable as an industrial dispute by virtue of strict compliance of the provisions of 9-A of the I.D. Act. The management has taken decision in June 1991 to revise the timings of Panvel Depot from 10.00 A.M. to 5.00 P.M. to 8.30 A.M. to 4.00 P.M. with lunch break from 12.00 Noon to 1.00 P.M., consequent to the departmentalisation of labour w.e.f. 1-5-91. This was considered necessary as workmen will be fresh in the morning hours and will be able to work more vigorously and enthusiastically and give better production. It was noticed that the staff at Panvel Depot commenced work from 8.30 to 10.00 A.M. as overtime as the regular working hours are from 10.00 A.M. to 5.00 P.M. in order to overcome this situation a notice of change in the service conditions under Section 9-A of the I.D. Act dt. 4-6-91 was issued. The management waited for 21 days after issue of the notice. There was no objection from any of the above Unions. Hence a final order revising the time as indicated in the above notice was issued on 2-7-91. Subsequently the Corporation has received a letter dt. 5-7-91 intimating that the employees association has raised an industrial dispute in this matter. In the joint discussions held by the A.L.C.(C)-II in this matter, the Zonal Secretary, Regional Secretary and the Zonal Treasurer participated on behalf of the employees association. After heated discussion the representatives of the Association agreed to withdraw the case and accept the revised timings.

It is denied that the understanding reached was not implemented and status quo was maintained. When once the notice under the Section 9-A has been issued the management is free to implement the order after 21 days subject to conditions that no objection was received from any quarters and no Conciliation/case is pending on this issue. The settlement has been arrived a 21-8-91. The letter dated 16-7-92 has no relevance to this issue. The letter dated 18-7-91 was not in the picture during the conciliation. It is an internal correspondence. It is denied to state that AM(I) for the first time revised the timings of the reporting staff. The Depot staff wants to work for 8 hours

nett. The Corporation was given a notice for working for 6 1/2 hours nett. As per the Regulation the staff are required to work only for 5 1/2 hours merely because they are working on overtime either from 8.30 A.M. to 10.00 A.M. or 5.00 P.M. to 5.30 P.M. The employees cannot claim that they should be employed every day on overtime for one and half hours. It is denied that the management has unilaterally changed the timings from 20-7-92. The employees cannot expect the management to give overtime even when there is no work. The management has complied with provisions of the Section 9-A and the reference may therefore be dismissed.

4. In the rejoinder, the union has contended as follows :

The Association has raised their objection before the expiry of 21 days from 4-6-91. It is incorrect to state that once a notice under Section 9-A of the I.D. Act has been given, the management is free to implement the same. A change of timings w.e.f. 20th July onwards has put every employee monetary loss to the tune of Rs. 500/- p.m. approximately. Change of timings ordered by the Depot Incharge without giving notice under Section 9-A is illegal. The workers are entitled to compensation @ one and half hours from 20th July, 1992.

5. The Point for consideration is whether the change of working hours ordered by the Corporation is in violation of Section 9-A of the I.D. Act ?

The Point :

The working hours of the employees at Panvel Depot are from 10.00 A.M. to 5.00 P.M. with an interval of half an hour for lunch between 1.00 P.M. to 1.30 P.M. The management proposed to change the same from 8.30 A.M. to 4.00 P.M. with a lunch break of one hour to 12.00 to 1.00 P.M. and has issued a notice on 4-6-91 for the same. The Employees Association has raised an industrial dispute before the R.L.C.(C) alleging that there is a violation of Section 9-A. The A.L.C., held the conciliation proceedings. In the conciliation the management as well as the members of the association participated. On the explanation given by the Corporation the representatives of the Association were satisfied and they have agreed to withdraw the reference. The only witness examined on behalf of the Association has stated in his evidence that the notice dt. 4-6-91 given by the Corporation was received by the President of the Association and the annexure to this notice gives the proposed changes for various depots including Panvel. According to this witness the union has challenged the notice dt. 4-6-91 but he admits that he does not remember the date on which they have challenged the notice before the Labour

Department. Admitted by this witness, he did not appear before the A.L.C.(C). According to this witness the President, Vice-President and Treasurer attended the conciliation proceedings. On the explanation given by the management the representatives of the Association had withdrawn the notice issued by them and the witness who knows the signature of Mr. Nilwarne, the President, admits that in the withdrawal Mr. Nilwarne signed. The management contends that the change of working hours was sought to be introduced consequent to the departmentalisation of labour. Their further contention is that for the purpose of neutralization, the management has decided to reduce the working hours of the labourers and has issued the notice on 4-6-91. The Depot Manager of the Corporation who has been examined as a witness has stated that there was no objection from any of the parties and therefore, the notice was given effective from 2-7-91; but the Corporation having received the notice dt. 5-7-91 from the Assistant Labour Commissioner has participated in the conciliation proceedings and upon the explanation given by the representative of the management the representatives of the Association had agreed to withdraw the case. The Dy. Manager has contended that the Association has accepted the revised timing as per the office order dt. 2-7-91 but the same is disputed by the association. In the minutes recorded regarding the same dt. 21-8-91 it is specifically stated that the notice has been issued by the management with a view to synchronise the timings with that of labour who are being departmentalised. It is also recorded that the union representatives stated that in the light of the clarification and subsequent clarification issued by the employer the union agreed to withdraw the notice and the dispute may be closed. This record of the minutes would establish that on the explanation given by the management the union representatives were satisfied and in view of the clarification and subsequent clarification issued by the employer the association has agreed to withdraw the notice and agreed to the dispute being closed. It does not give room to hold that the working hours were agreed to be as before from 10.00 A.M. to 5.00 P.M. with a lunch break of half an hour as contended by the union. This minutes has been signed by Mr. Nilwarne as a representative of the Union. It cannot be stated that he would have signed this minutes and agreed to withdraw the notice issued by the association and agreed to the closure of the dispute if the association is not satisfied with the explanation given by the management regarding the necessity for changing the working hours. If further leads us to the conclusion that the contention of the association is that status quo was to be maintained subsequent to this withdrawal is not a tenable one in view of the minutes recorded on 21-8-91.

6. Much is said about the letter dated 18-7-91 and the letter dt. 16-7-92. These two letters are internal correspondence between the Regional Manager and the District Manager. Therefore these two letters cannot lead us to the inference that the Corporation has agreed for maintaining the earlier working hours i.e. from 10.00 A.M. to 5.00 P.M. The stand of the Corporation that the change of working hours proposed was the consequence of departmentalisation of labour to neutralize the duty hours of the inter linked work force, is satisfactory. Therefore, the association cannot take advantage of the letter dt. 16-7-92 with this internal correspondence between the Deputy Manager and the District Manager, since the conciliation proceedings before the A.L.C. in which the Regional President of the Association has participated ended in the withdrawal of the notice issued by the Association. These two letters are not genuine to the point at issue.

7. The Association has also contended that order issued by the Assistant Manager, Panvel on 18-7-92 without a notice under Section 9-A is illegal and cannot be accepted; but this contention is without merits since this office order is only complies with the notice already issued on 4-6-91. It is not a separate order by which the service conditions of the workers in Panvel Depot, in particular their working hours is changed by the Asstt. Manager. He has only implemented the order passed by the Regional Manager in the annexure to the notice dt. 4-6-91 regarding the working hours. Therefore, there is no necessity for issuing any separate notice.

8. Considering all these aspects, I am of opinion that the reference itself is not maintainable on the ground that there is no industrial dispute. It is held that the action of the management of the F.C.I. in changing the working hours of the F.C.I. Employees working at Panvel Depot from 8.30 A.M. to 5.00 P.M. to 8.30 A.M. to 4.00 P.M. is legal and justified and therefore, the workmen are not entitled to any relief.

Award passed accordingly.

C. V. GOVARDHAN, Presiding Officer

नई दिल्ली, 19 फरवरी, 1999

का.आ. 778,—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी. एल. के प्रबंधन के संवद्ध नियोजकों और उनके कामकारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-2-99 को प्राप्त हुआ था।

[सं. नं-19012/47/86-ड-IV बी)]

वी.के. राजन, संरक्षक अधिकारी

New Delhi, the 19th February, 1999

S.O. 778.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of E.C.L. and their workman, which was received by the Central Government on 17-2-1999.

[No. L-19012/47/86-D. IV B]

V. K. RAJAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 7 of 1988

PARTIES :

Employers in relation to the management of Jemchhari Khas Colliery under the Agent, Jaykaynagar (R) Colliery of M/s. E.C. Ltd., P.O. Jaykaynagar (Burdwan).

AND

Their workmen.

PRESENT :

Mr. Justice A. K. Chakravarty,

Presiding Officer.

APPEARANCE :

On behalf of Management : Mr. P. Banerjee, Advocate.

On behalf of Workmen : Mr. A. K. Dass, Advocate.

STATE : West Bengal

INDUSTRY : Coal

AWARD

By Order No. L-19012/47/86-D. IV(B) dated 23rd January, 1987 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the Management of New Jemchhari Khas Colliery under the Agent, Jaykaynagar(R) Colliery of M/s. E.C. Ltd., P.O. Jaykaynagar (Burdwan) in stopping increments for the years 1984, 1985 and 1986 of Harrier Gope Security Guard, was justified? If not, to what relief the workman concerned is entitled?"

2. Colliery Mazdoor Sabha of India (CITU), Raniganj (in short the Union) has raised this industrial dispute challenging the action of the management of New Jemehari Khas Colliery under the Agent, Jaykaynagar(K) Colliery of M/s. E.C. Ltd. in stopping increments of the concerned workman, Harihar Gope for the years 1984, 1985 and 1986. The union's case, in short, is that the concerned workman was appointed as a Security Guard in Jemehari Khas Colliery and he had been working therefore a sufficiently long time. The concerned workman also had a clean and unblemished record of service since his appointment and he had been performing his duties with utmost sincerity, honesty and diligence and efficiently. The concerned workman along with another were performing their duties as Security Guards on 18-7-1983 in the night from 12 mid-night to 8 A.M. at 18 No. Pump. There was heavy rain on that night during work hours at about 2 A.M. and it continued for 24 hours. During such heavy rain the workman had to remain confined in the Pump room as the Company neither provides any Rain-coat nor torch. The Company thereafter issued a chargesheet to the concerned workman bearing No. ECL/JKN/33/P-161 dated 19-7-1983 on the ground of misconduct as contained in section 17(i)(e) and 17(i)(f) of the Model Standing Orders applicable in the establishments of coal mining industry. The concerned workman sent his reply to the said charge sheet on 24-7-1983 denying the charges against him. The Company, thereafter, held a domestic enquiry and awarded punishment upon him by stopping his three increments with cumulative basis for the years 1984, 1985 and 1986. It is alleged that the principles of natural justice were not followed and finding of the Enquiry Officer was perverse. The disciplinary authority without applying its mind, arbitrarily inflicted the above punishment on the basis of such enquiry report and findings. The union referred the matter for conciliation, but that having failed, the matter was sent to this Tribunal for adjudication by the Central Government. The union has also alleged that the management acted wrongly in punishing the concerned workman without providing adequate protection against rains. The union has accordingly prayed for restoration of three increments of the concerned workman which was stopped by way of punishment.

3. The management filed a written statement, alleging, inter alia, that the concerned workman along with another Security Guard, Shri Balli Bhar were on duty on 18-7-1983 between 12 mid-night to 8 A.M. In spite of warnings to these Security Guards that no theft should take place, there was a theft of cable measuring about 400 feet costing Rs. 10,000. The concerned workman was accordingly charged under section 17(i)(a) and 17(i)(f) of the Model Standing Orders for commission of theft, fraud and dishonesty and also for habitual neglect of work. Chargesheet was accordingly issued

and explanation was sought for. Such explanation having been found to be unsatisfactory, management ordered for a domestic enquiry and in that enquiry both sides participated and the Enquiry Officer found the concerned workman guilty of the charges. The management has denied that principles of natural justice were not followed in holding the enquiry or that the finding of the Enquiry Officer was perverse. Management also alleged that there was sufficient light and the concerned workman could have seen the theft from the Pump House, had he been alert. The management has further alleged that the punishment imposed upon the concerned workman being in proportion to the offence committed by him, the reference should be dismissed.

4. Two witnesses were examined on behalf of the management in this case. The union only examined the concerned workman in support of its case. The only documentary evidence produced in this case is the order of punishment issued against the concerned workman.

5. This case seems to be peculiar in the sense that the management seeks to prove the guilt of a person without production of any paper whatsoever, including the chargesheet, enquiry proceeding, enquiry report etc. The principal onus to prove justification of imposition of punishment against the concerned workman being primarily upon the management, it is for them to produce all materials justifying such punishment. In the instant case, it is frankly conceded by Mr. Banerjee, learned Advocate appearing for the management that all papers concerning the disciplinary proceeding, including the chargesheet have been lost and accordingly it is not possible for the management to produce the same. Mr. Banerjee, however, submitted that the union having undertaken to produce such document, it ought to have produced the same and non-production of such document raises an adverse presumption against them. It is true that the union craved leave from this Tribunal for production of the enquiry report and the finding of the Enquiry Officer at the time of hearing in its written statement, but such non-production shall not visit the union with any adverse presumption as no such document was called for by the management. Even assuming that adverse presumption could be raised, still then, the Tribunal shall have to guess about what presumption is to be made under such circumstances.

6. It is admitted in the written statement of the union that the management issued a chargesheet to the concerned workman for commission of theft, fraud or dishonesty in respect of the Company's property under section 17(i)(a) and for habitual neglect of duty under section 17(i)(f). Of the two witnesses examined by the management in the matter, MW-1 Rameswar Prasad, who held the enquiry as an Enquiry Officer stated that he did it

correctly upon due compliance of natural justice, but in the absence of the enquiry proceeding itself it is not possible to come to any definite conclusion in this matter. MW-2, a Record Clerk of Jaykaynagar Colliery also deposed that he could not find any paper concerning the said enquiry proceeding. WW-1, Harihar Gope the concerned workman, however, deposed that the principles of natural justice was not followed in the domestic enquiry. As stated earlier, it is no use in scanning these evidences without going through the enquiry proceeding, which is admittedly lost.

7. This Tribunal gave an opportunity to adduce fresh evidence to both the parties upon presumption that the loss of enquiry proceeding means holding of no proceeding at all, but no fresh evidence was adduced as it was not possible for the management to do anything more in the matter.

8. Mr. Banerjee, however submitted with reference to the written statement of the union that there is an admission of guilt of the concerned workman that he remained in the pump house for 2½ hours during the heavy rain on the night. There is no evidence that the alleged theft took place during that time of the night while the concerned workman remained in the pump house. Even assuming that he was on duty at that time, there is nothing on record to prove that his taking shelter in the

pump house to protect himself against rain was an offence which was not to be done by a Security Guard. It is not clear whether from the pump house the place could be properly guarded. The enquiry proceeding having not been proved, any action taken by the management on the basis of any report of the Enquiry Officer in the same, cannot be accepted as proper. The punishment having been awarded on the basis of the enquiry report and the enquiry proceeding which being not available for scrutiny that I have no other alternative but to hold that no justification for award of punishment upon the concerned workman by the management has been shown in this case. It may further be mentioned in this connection that the management having failed to produce any fresh material inspite of fresh opportunity being given by the Tribunal to that effect that I am to hold that the case of the management has also not been proved on merit.

9. So, upon consideration of the facts and circumstances of the case, I am to hold that the management of New Jemehari Khas Colliery under the Agent, Jaykaynagar(R) Colliery of M/s. E.C. Ltd. illegally stopped the increments of the concerned workman for the years 1984, 1985 and 1986. The order of punishment upon the workman is accordingly set aside and the management is directed to restore his increments of the above period.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer